



Charles Figur/R8/USEPA/US
11/14/2008 08:32 AM

To Linda Jacobson/R8/USEPA/US@EPA
cc Sharon Kercher/ENF/R8/USEPA/US@EPA, Charles
Figur/R8/USEPA/US@EPA
bcc

Subject Fw: Montana Custodial Trust Settlement and Attachments

Linda -

As requested.

Region 8's signature page is with DOJ, still undated. I do not know whether HQ, DOJ, Montana, or ASARCO have signed their pages. The plan was for the parties to try really hard to get the agreement filed with the bankruptcy court right around 10/14 or 15. (My efforts to get it done and in earlier were thwarted by folks choosing to continue to raise niggling issues over and over again.) Of course, Sterlite announced they would not perform according to the PSA which underlies ASARCO's now-defunct proposed plan on 10/14. So this "settlement" is on hold until further notice.

Chuck

----- Forwarded by Charles Figur/R8/USEPA/US on 11/14/2008 08:26 AM -----



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com>

10/15/2008 03:58 PM

To <aileen.hooks@bakerbotts.com>,
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<Amy.Horner@sol.doi.gov>, <bkirley@mt.gov>, Charles
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Gibbons/DC/USEPA/US@EPA
cc <Tony.Davis@bakerbotts.com>, <TAldrich@asarco.com>

Subject Montana Custodial Trust Settlement and Attachments

All,

Attached please find the proposed final version of the Montana Custodial Trust Settlement Agreement and the attachments.

<<Montana Custodial Trust Settlement.Final.pdf>> <<Montana Custodial Trust Settlement- Attachment B.pdf>> <<Montana Custodial Trust Settlement- Attachment A.pdf>> <<Montana Custodial Trust Settlement-Attachment C.pdf>> <<Montana Environmental Custodial Trust Settlement-Attachment D The Trust.pdf>>

Best regards,

Amber MacIver

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Montana Custodial Trust Settlement.Final.pdf



Montana Custodial Trust Settlement- Attachment B.pdf



Montana Custodial Trust Settlement- Attachment A.pdf



Montana Custodial Trust Settlement-Attachment C.pdf



Montana Environmental Custodial Trust Settlement-Attachment D The Trust.pdf

Attachment A
Montana Custodial
Trust Settlement Agreement

Definition of Sites

1. The Black Pine site in Granite County, Montana includes the Black Pine Designated Property, any further description in the proofs of claim, and any location at which hazardous substances from this property have come to be located (the "Black Pine Site").
2. The Mike Horse site, also known as the Upper Blackfoot Mining Complex site, in Lewis and Clark County, Montana includes the Mike Horse Designated Property, any further description in the proofs of claim, and any location at which hazardous substances from this property have come to be located (the "Mike Horse Site").
3. The Iron Mountain site in Mineral County, Montana includes the Iron Mountain Designated Property, any further description in the proofs of claim, and any location at which hazardous substances from this property have come to be located (the "Iron Mountain Site").
4. The East Helena site in Lewis and Clark County, Montana includes the East Helena Designated Property, any further description in the proofs of claim, and any location at which hazardous substances from this property have come to be located (the "East Helena Site").

Black Pine Mine Designated Property

Situated in Granite County Montana,

The following Patented Mining Claims and Mill Sites, located in Sections 7-9 and Sections 16-20 of Township 8 North, Range 14 West, and in Section 24, Township 8 North, Range 15 West, M.P.M., Granite County, Montana:

The Axtell Lode - Mineral Survey No. 4239 and the St. Patrick Lode - Mineral Survey No. 4253. All according to Patent recorded in Book 1 of Patents, Page 83.

The Beunveneutra Lode- Mineral Survey No. 1917, designated as Lot No. 42. All according to Patent recorded in Book F of Deeds, Page 270.

The Betsy Cook Lode and the Beunveneutra Mill Site - Mineral Survey No. 2943A & B. All according to Patent recorded in Book L of Deeds, Page 133.

The Blue Bird Lode - Mineral Survey No. 3944. All according to Patent recorded in Book 1 of Patents, Page 1.

The Franklin Lode - Mineral Survey No. 4182 and the Burt Lode - Mineral Survey No. 4184. All according to Patent recorded in Book 1 of Patents, Page 42.

EXPRESSLY EXCEPTING AND EXCLUDING THEREFROM all that portion of the ground, herein before described, embraced in said mining claim or Survey No. 1731.

The Cleveland Lode - Mineral Survey No. 3474. All according to Patent recorded in Book L of Deeds, Page 107.

The Combination Lode - Mineral Survey No. 1732, designated as Lot No. 38. All according to Patent recorded on Roll 58 of Microfilm, Page 658.

The Combination No. 2 Lode and Mill-Site - Mineral Survey No. 1937, designated as Lot Nos. 44A and 44B. All according to Patent recorded in Book F of Deeds, Page 470.

The Crandall Lode - Mineral Survey No. 4191, and the Ira E. Lode - Mineral Survey No. 4195. All according to Patent recorded in Book 1 of Patents, Page 59.

EXPRESSLY EXCEPTING AND EXCLUDING THEREFROM all that portion of the ground, herein before described, embraced in said mining claim or Survey No. 4183.

The Crown Prince Lode - Mineral Survey No. 4238, the Danger Lode - Mineral Survey
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No. 4240, and the Snow Shoe Lode - Mineral Survey No. 4252. All according to Patent recorded in Book 1 of Patents, Page 67.

EXPRESSLY EXCEPTING AND EXCLUDING all that portion of the ground, herein before described, embraced in said mining claim or Survey No. 1936A.

The General Reynolds Lode and Mill Site - Mineral Survey No. 4178A & B. All according to Patent recorded in Book 1 of Patents, Page 79.

The General Rosecrans Lode and Mill Site - Mineral Survey No. 2008, designated as Lot Nos. 50A and 50B. All according to Patent recorded in Book K of Deeds, Page 621.

The George Washington Lode- Mineral Survey No. 3101. All according to Patent recorded in Book K of Deeds, Page 126.

The Gilmore Lode - Mineral Survey No. 4179, and the Wallender Lode - Mineral Survey No. 4183. All according to Patent recorded in Book 1 of Patents, Page 32.

EXPRESSLY EXCEPTING AND EXCLUDING THEREFROM all that portion of the ground, herein before described, embraced in said mining claim or Survey No. 1731.

The Gladstone Lode and Mill Site - Mineral Survey No. 1939, designated as Lot Nos. 46A and 46B. All according to Patent recorded in Book L of Deeds, Page 308.

EXPRESSLY EXCEPTING AND EXCLUDING THEREFROM all that portion of the ground, herein before described, embraced in said mining claim or Survey No. 1736.

The Harrison Lode - Mineral Survey No. 3182. All according to Patent recorded in Book L of Deeds, Page 96.

The Trautwine Lode - Mineral Survey No. 4180, and the Haswell Lode - Mineral Survey No. 4192. All according to Patent recorded in Book 1 of Patents, Page 49.

EXPRESSLY EXCEPTING AND EXCLUDING all that portion of the ground, herein before described, embraced in said mining claim or Survey No. 1731 and 4184.

The Hermanita Lode and Mill Site - Mineral Survey No. 2009, designated as Lot Nos. 51A and 51B. All according to Patent recorded in Book L of Patents, Page 160.

The Ida B. Lode - Mineral Survey No. 3100. All according to Patent recorded on Roll 58 of Microfilm, Page 664.

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The Keystone Lode - Mineral Survey No. 3943. All according to Patent recorded in Roll 58 of Microfilm, Page 661.

The Turbeville Lode - Mineral Survey No. 4198, and the Knight Lode - Mineral Survey No. 4199. All according to Patent recorded in Book 1 of Patents, Page 53.

EXPRESSLY EXCEPTING AND EXCLUDING THEREFROM all that portion of the ground, herein before described, embraced in said mining claim or Survey No. 1936B and 4181.

The Lewis Lode - Mineral Survey No. 3183. All according to Patent recorded in Roll 58 of Microfilm, Page 662.

The Little Nell Lode - Mineral Survey No. 2010, designated as Lot No. 52A. All according to Patent recorded in Book I of Deeds, Page 449.

The Mabel Lode - Mineral Survey No. 3945. All according to Patent recorded in Book 1 of Patents, Page 46.

The Maude Lode - Mineral Survey No. 4237. All according to Patent recorded in Book 1 of Patents, Page 98.

The Prince Quartz Lode - Mineral Survey No. 4193, and the Nancy Hanks Quartz Lode - Mineral Survey No. 4194. All according to Patent recorded in Book 1 of Patents, Page 71.

The Onyx Lode - Mineral Survey No. 2012, designated as Lot 54A. All according to Patent recorded in Book L of Deeds, Page 206.

The Oxide Lode - Mineral Survey No. 1736, designated as Lot No. 40. All according to Patent recorded on Roll 58 of Microfilm, Page 659.

The Paul Jones Lode - Mineral Survey No. 4181. All according to Patent recorded on Roll 58 of Microfilm, Page 663.

The Royal Bounty Lode - Mineral Survey No. 2297, designated as Lot No. 56A. All according to Patent recorded in Book I of Deeds, Page 445.

EXPRESSLY EXCEPTING AND EXCLUDING all that portion of the ground, herein before described, embraced in said mining claim or Survey No. 1732 and 1937.

The Ruby Lode and Mill Site - Mineral Survey No. 2007, designated as Lot Nos. 49A and 49B. All according to Patent recorded in Book L of Deeds, Page 251.

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The Sardonyx Lode - Mineral Survey No. 2013, designated as Lot No. 55A. All according to Patent recorded in Book L of Deeds, Page 204.

The Shunk Lode - Mineral Survey No. 4203, and the Searles Lode - Mineral Survey No. 4204. All according to Patent recorded in Book 1 of Patents, Page 28.

The Silver Chief Lode and Mill Site - Mineral Survey No. 1938, designated as Lot Nos. 45A and 45B. All according to Patent recorded in Book F of Deeds, Page 424.

The Silver Flake Lode - Mineral Survey No. 1731, designated as Lot No. 37. All according to Patent recorded on Roll 58 of Microfilm, Page 660.

The Stormy Petrel Lode- Mineral Survey No. 3767. All according to Patent recorded on Book L of Deeds, Page 306.

The Sultana Lode and Mill Site - Mineral Survey No. 1936, designated as Lot Nos. 43A and 43B. All according to Patent recorded in Book F of Deeds, Page 273.

The Tempest Lode - Mineral Survey No. 1735, designated as Lot No. 39. All according to Patent recorded on Roll 58 of Microfilm, Page 657.

The Thanksgiving Lode and Mill Site - Mineral Survey No. 4177A and B. All according to Patent recorded in Book 1 of Patents, Page 63.

The Tim Smith Lode - Mineral Survey No. 2607, designated as Lot No. 57. All according to Patent recorded in Book K of Deeds, Page 632.

The Waldteufel Lode and Mill Site - Mineral Survey No. 2006, designated as Lot Nos. 48A and 48B. All according to Patent recorded in Book L of Deeds, Page 157.

The Woodlawn Lode and Mill Site - Mineral Survey No. 2005A and B. All according to Patent recorded in Book 1 of Patents, Page 149.

A tract of land located in the SE 1/4 SW 1/4 of Section 16, Township 8 North, Range 14 West, P.M.M., Granite County, Montana, being more particularly described as Lot 7. All according to Quit Claim Deed recorded on Roll 52 of Microfilm, Page 339.

Attachment B
Montana Custodial
Trust Settlement Agreement

UNPATENTED CLAIMS:

The following described claims are of record in the office of County Clerk and Recorded in Granite County, Montana, and are filed in the State Office of the United States Bureau of Land Management as follows:

CLAIM NAME	BLM MMC NUMBER	BOOK	PAGE	DATE OF LOCATION
Granite Hill 1	204669	44	797	5/27/1998
Granite Hill 2	204670	44	798	5/27/1998
Granite Hill 3	204671	44	799	5/27/1998
Granite Hill 4	204672	44	800	5/27/1998
Granite Hill 5	204673	44	801	5/27/1998
Granite Hill 6	116314	20	654	10/4/1984
Granite Hill 7	116315	20	655	10/4/1984
Granite Hill 11	204674	44	791	7/2/1998
Granite Hill 12	116320	20	660	10/4/1984
Granite Hill 13	116321	20	661	10/4/1984
Granite Hill 14	116322	20	662	10/4/1984
Granite Hill 15	116323	20	663	10/4/1984
Granite Hill 16	116324	20	664	10/4/1984
Granite Hill 17	116325	20	665	10/4/1984
Granite Hill 18	116326	20	666	10/4/1984
Granite Hill 21	116329	20	670	10/15/1984
Granite Hill 21A	204675	44	790	7/2/1998
Granite Hill 22	116331	20	671	10/15/1984
Granite Hill	116332	20	672	10/15/1984

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CLAIM NAME	BLM MMC NUMBER	BOOK	PAGE	DATE OF LOCATION
23				
Granite Hill 24	116333	20	673	10/15/1984
Granite Hill 25	116334	20	674	10/13/1984
Granite Hill 26	116335	20	675	10/13/1984
Granite Hill 27	116336	20	676	10/13/1984
Granite Hill 28	116337	20	677	10/13/1984
Granite Hill 30	116339	20	679	10/15/1984
Granite Hill 31	116340	20	680	10/15/1984
Granite Hill 32	116341	20	681	10/13/1984
Granite Hill 33	116342	20	682	10/13/1984
Granite Hill 34	116343	20	683	10/13/1984
Granite Hill 35	116344	20	684	10/13/1984
Granite Hill 36	116345	20	685	10/13/1984
Granite Hill 37	116346	20	686	10/13/1984
Granite Hill 38	116347	20	687	10/13/1984
Granite Hill 39	116348	20	688	10/13/1984
Granite Hill 40	116349	20	689	10/13/1984
Granite Hill 41	116350	20	690	10/13/1984
Granite Hill 42	116351	20	691	10/13/1984

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CLAIM NAME	BLM MMC NUMBER	BOOK	PAGE	DATE OF LOCATION
Granite Hill 43	116352	20	692	10/13/1984
Granite Hill 52	204676	44	802	5/27/1998
Granite Hill 54	204677	44	803	5/27/1998
Granite Hill 56	204678	44	804	5/27/1998
Granite Hill 58	204679	44	805	5/27/1998
Granite Hill 59	116363	20	703	10/6/1984
Granite Hill 60	204680	44	806	5/27/1998
Granite Hill 61	204681	44	807	5/27/1998
Granite Hill 62	116366	20	706	10/6/1984
Granite Hill 64	116368	20	708	10/6/1984
Granite Hill 66	116370	20	710	10/6/1984
Granite Hill 68	116372	20	712	10/6/1984
Granite Hill 70	116374	20	714	10/6/1984
Granite Hill 72	116377	20	716	10/6/1984
Granite Hill 163	120231	21	706	7/8/1985
Granite Hill 164	120232	21	707	7/9/1985
Granite Hill 165	120233	21	708	7/9/1985
Granite Hill 167	120234	21	709	7/9/1985
J.J. 1	120225	21	564	6/21/1985

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CLAIM NAME	BLM MMC NUMBER	BOOK	PAGE	DATE OF LOCATION
(Amended)		21	700	6/27/1985
J.J. 2	120226	21	565	6/21/1985
(Amended)		21	701	6/27/1985
J.J. 3	120227	21	566	6/21/1985
(Amended)		21	702	6/28/1985
J.J. 4	120228	21	567	6/21/1985
(Amended)		21	703	6/30/1985
J.J. 5	120229	21	568	6/21/1985
(Amended)		21	704	7/2/1985
J.J. 6	120230	21	705	7/15/1985
J.J. 7	121093	22	254	7/29/1985
J.J. 8	121094	22	255	8/8/1985
J.J. 9	121095	22	256	8/8/1985
J.J. 10	121096	22	257	8/15/1985
Bee 1	35631	26	548	8/28/1972
Bee 2	35632	26	549	8/28/1972
Bee 3	35633	26	550	8/28/1972
Bee 4	35634	26	551	8/28/1972
(Amended)		22	259	7/29/1985
Bee 5	35635	26	552	8/29/1972
Bee 6	35636	26	553	8/29/1972
Bee 7	35637	26	554	8/29/1972
Bee 8	35638	26	555	8/29/1972
(Amended)		22	258	7/29/1985
Bee 10	204664	44	792	7/2/1998
(Amended)		44	867	7/30/1998
Bee 11	204665	44	796	7/2/1998
Bee 12	204666	44	793	7/2/1998
(Amended)		44	868	7/30/1998
Bee 13	204667	44	794	7/2/1998
Bee 14	204668	44	795	7/2/1998
(Amended)		44	869	7/30/1998
Bee 15	35643	2	282	10/23/1973
Bee 16	35644	2	283	10/23/1973
Bee 17	35645	2	284	10/23/1973
Bee 18	35646	2	285	10/23/1973

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CLAIM NAME	BLM MMC NUMBER	BOOK	PAGE	DATE OF LOCATION
Bee 19	35647	2	286	10/23/1973
Bee 20	35648	2	287	10/23/1973
Bee 100	35649	2	496	3/7/1974
Bee 101	35650	2	497	3/7/1974
Bee 102	35651	2	498	3/7/1974
Bee 103	35652	2	499	3/7/1974
Buschman	35657	21	564	3/7/1974
Walkup	35656	21	594	3/7/1974
You Bet	35658	23	548	3/7/1974
Upsilon	35655	24	300	3/7/1974
Phi	35653	24	301	3/7/1974
Tau	35654	24	302	3/7/1974
BP #5080A	186591	32	758	8/13/1991
BP #5259	186632	32	799	8/14/1991
BP #5260	186633	32	800	8/14/1991
BP #5261	186634	32	801	8/14/1991
BP #5262	186635	32	802	8/14/1991
BP #5263	186636	32	803	8/14/1991
BP #5264	186637	32	804	8/14/1991
BP #5265	186638	32	805	8/14/1991
BP #5266	186639	32	806	8/14/1991
BP #5267	186640	32	807	8/14/1991
BP #5268	186641	32	808	8/14/1991
BP #5269	186642	32	809	8/14/1991
BP #5270	186643	32	810	8/14/1991
BP #5271	186644	32	811	8/14/1991
BP #5272	186645	32	812	8/13/1991
BP #5273	186646	32	813	8/13/1991
BP #5274	186647	32	814	8/13/1991
BP #5275	186648	32	815	8/13/1991
BP #5276	186649	32	816	8/13/1991
BP #5277	186650	32	817	8/13/1991
BP #5278	186651	32	818	8/13/1991
BP #5279	186652	32	819	8/13/1991
BP #5280	186653	32	820	8/13/1991
BP #5281	186654	32	821	8/13/1991

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CLAIM NAME	BLM MMC NUMBER	BOOK	PAGE	DATE OF LOCATION
BP #5359	186664	32	831	8/14/1991
BP #5360	186665	32	832	8/14/1991
BP #5361	186666	32	833	8/14/1991
BP #5362	186667	32	834	8/14/1991
BP #5363	186668	32	835	8/14/1991
BP #5364	186669	32	836	8/14/1991
BP #5365	186670	32	837	8/14/1991
BP #5366	186671	32	838	8/14/1991
BP #5367	186672	32	839	8/14/1991
BP #5368	186673	32	840	8/14/1991
BP #5369	186674	32	841	8/14/1991
BP #5370	186675	32	842	8/14/1991
BP #5371	186676	32	843	8/14/1991
BP #5372	186677	32	844	8/14/1991
BP #5373	186678	32	845	8/13/1991
BP #5374	186679	32	846	8/13/1991
BP #5375	186680	32	847	8/13/1991
BP #5376	186681	32	848	8/13/1991
BP #5377	186682	32	849	8/13/1991
BP #5378	186683	32	850	8/13/1991
BP #5379	186684	32	851	8/13/1991
BP #5380	186685	32	852	8/13/1991
BP #5381	186686	32	853	8/13/1991
BP #5459	186690	32	857	8/14/1991
BP #5460	186691	32	858	8/14/1991
BP #5461	186692	32	859	8/14/1991
BP #5462	186693	32	860	8/14/1991
BP #5463	186694	32	861	8/14/1991
BP #5467	186695	32	862	8/14/1991
BP #5468	186696	32	863	8/14/1991
BP #5473	186697	32	864	8/13/1991
BP #5474	186698	32	865	8/13/1991
BP #5475	186699	32	866	8/13/1991
BP #5476	186700	32	867	8/13/1991
BP #5477	186701	32	868	8/13/1991
BP #5478	186702	32	869	8/13/1991

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CLAIM NAME	BLM MMC NUMBER	BOOK	PAGE	DATE OF LOCATION
BP #5479	186703	32	870	8/13/1991
BP #5480	186704	32	871	8/13/1991
BP #5481	186705	32	872	8/13/1991

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Mike Horse Mine Designated Property

Situated in Lewis and Clark County, Montana

TOWNSHIP 15 NORTH, RANGE 6 WEST, P.M.M., LEWIS AND CLARK COUNTY,
MONTANA

SECTION 19: Government Lots 1 and 6 LESS AND EXCEPT those portions of said Lot 6 lying North of Montana State Highway No. 200; the NW1/4NE1/4 LESS AND EXCEPT those certain tracts deeded to Lake E. Henson and Katy J. Henson recorded in Book 219 of Deeds at Page 101 and to Ray Jensen and Bernice P. Jensen, as recorded in Book 231 of Deeds at Page 4 records of Lewis and Clark County, Montana.

AND

TOWNSHIP 15 NORTH, RANGE 6 WEST, P.M.M., LEWIS AND CLARK COUNTY,
MONTANA

SECTION 19: Government Lots 2 and 3; the NW1/4SE1/4 and the SW1/4NE1/4: LESS AND EXCEPT that portion of State Highway No. 200; LESS AND EXCEPT that portion described in Book 247 of Deeds, Page 106, records of Lewis and Clark County, Montana.

AND

TOWNSHIP 15 NORTH, RANGE 6 WEST, P.M.M., LEWIS AND CLARK COUNTY,
MONTANA

SECTION 20: Government Lots 5, 9, 15 and 16; LESS AND EXCEPT those portions of said lots lying North of State Highway No. 200; LESS AND EXCEPT that portion deeded for highway in Book 193 of Deeds, Page 276; LESS AND EXCEPT that portion described in Book 247 of Deeds, Page 106, records of Lewis and Clark County, Montana.

AND

TOWNSHIP 15 NORTH, RANGE 7 WEST, P.M.M., LEWIS AND CLARK COUNTY,
MONTANA

SECTION 24: NE1/4SE1/4

Attachment B
Montana Custodial
Trust Settlement Agreement

PATENTED CLAIMS:

The following described patented lode mining claims and millsites situated in portions of Sections 16, 17, 19, 20, 21, 22, 27, 28 and 29, 33 and 34 of Township 15 North, Range 6 West, P.M.M., Lewis and Clark County, Montana.

CLAIM NAME

Anaconda MS# 9286

Big Dick MS# 9286

Black Diamond MS# 9287

Blackfoot Belle MS# 10502

Blue Cristle MS# 9286

Bonanza MS# 9287

Carbonate No. 1 MS# 10557

Carbonate No. 2 MS# 10557

Carbonate No. 3 MS# 10556

Carbonate No. 5 MS# 10556

Consolation MS# 10502

Cicero MS# 9287

Copper Bell MS# 9286

Copper Gate MS# 9806

Daylight MS# 9806

Edith MS# 7356

Eureka MS# 10105

Golden Eagle MS# 10502

Helena MS# 7353

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Jumbo MS# 9287
Little Joe MS# 9286
Mary P. MS# 9286
Midnight MS# 9806
Midnight Millsite MS# 10106
Paymaster MS# 9287
Summit Fraction MS# 10105
Sunlight Fraction MS# 9806
Sunset MS# 9806
Tunnel Site MS# 10105
Yellowstone MS# 9806
Detroit Quartz Lode Mining Claim MS# 10371
Sterling Quartz Lode Mining Claim MS# 10371
Little Nell Quartz Lode Mining Claim MS# 10371
Hog All Quartz Lode Mining Claim MS# 10371
Mike Horse Quartz Lode Mining Claim MS# 10371
Pine Hill Quartz Lode Mining Claim MS# 10371
Black Ore Quartz Lode Mining Claim MS# 10371
Denver Quartz Lode Mining Claim MS# 7351
Capital Quartz Lode Mining Claim MS# 7354
Snowdrift Quartz Lode Mining Claim MS# 7352
Copper Wreath Quartz Lode Mining Claim MS# 7357

Attachment B
Montana Custodial
Trust Settlement Agreement

UNPATENTED CLAIMS:

The following describe lode mining claims located in Section(s) 5-6, 16-22, 27-29, 31-34. Township(s) 15 North and 14 North, Range 6 West, Montana Principal Meridian, Lewis & Clark County, State of Montana, the location notices of which are of record in the office of the County Clerk and Recorder and filed in the State Office of the United States Bureau of Land Management as follows:

<u>CLAIM NAME</u>	<u>BLM MMC NUMBER</u>	<u>BOOK</u>	<u>PAGE</u>
A	32872	28	172
A&H	32873	28	175
A1	32874	28	136
AR	32875	28	173
Apex No. 1 (Amended)	32876	27	218-19
Apex No. 2	32877	27	205-07
Apex No. 3	32878	28	211
Axe 1	32879	87	221
Axe 2	32880	87	223
Axe 3	32881	87	225
Axe 4	32882	87	227
Axe 5	32883	87	229
B	32886	87	177
Bar 1	32887	87	491
Bar 2	32888	87	495
Bar 3	32889	87	497
Bar 4	32890	87	499
Bar 5	32891	87	501
Bar 6	32892	87	503
Bar 7	32893	87	505
Bar 10	32894	87	507
Bar 11	32895	87	509
Bar 12	32896	87	511
Bar 13	32897	87	513
Bar 14	32898	87	515
Bar 15	32899	87	623
Bar 16	32900	87	625
Bar 17	32901	87	627
Bar 18	32902	87	629

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<u>CLAIM NAME</u>	<u>BLM MMC NUMBER</u>	<u>BOOK</u>	<u>PAGE</u>
Beauty	32903	28	210
Big Chief (Amended)	32904	27	133
Blue Bell Fraction	32905	28	41
Bruce	32906	87	391
Bruce 2	32907	87	393
Bruce 3	32908	87	395
Bruce 4	32909	87	517
Bruce 5	32910	87	519
C	32911	28	170
Capitol No. 2	32912	27	178-79
Carbogold	32913	28	59
Carbonate	32914	28	45
Carbonate No. 2	32915	28	38
Carbonate Ore	32916	28	45
Conken No. 7 (Amended)	32917	27	219-221
Conken No. 10 (Amended)	32918	27	183-184
Contact (Amended)	32919	28	133
D	32920	28	168
Deer #1	32921	28	46
Deer #2	32922	28	37
Denver No. 1 (Amended)	32923	27	215
Denver #5 (Amended)	32924	27	216-17
Diamond T	32926	28	428
E	32927	28	196
Edith 2	32928	29	17
Eye	32929	28	200
F	32930	28	197
Fir No. 1	32931	87	27
Fir No. 2	32932	87	29
FR	32934	28	171
G	32935	28	198
Golden	32936	27	184
H	32938	28	199
H & A	32939	28	174
HG	32940	28	169
Helena No. 2	32941	29	16

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<u>CLAIM NAME</u>	<u>BLM MMC NUMBER</u>	<u>BOOK</u>	<u>PAGE</u>
Helena No. 3	32942	29	18
Jane Lode (Amended)	32945	27	187
Jeep (Amended)	32946	27	213-214
K and B	32947	27	180
Keystone	32948	27	172-173
Land's End Fraction	32949	28	44
Lode Star	32951	27	124
Middle (Amended)	32952	28	69
Mineral State	32953	27	130
Morris Fraction	32955	28	208
Norman	32956	28	140
North Central (Amended)	32957	27	129
Owl (Amended)	32958	27	169
Pat (Amended)	32959	27	212
Phoebe (Amended)	32960	27	189
Pine No. 17	32961	31	825
Pine Hill No. 2	32962	28	206
Pleasant Hill (Amended)	32964	27	132
Porphyry #1	32965	28	42
Porphyry #2	32966	28	43
Power	32967	27	191
R. Crow	32968	28	209
Rader	32969	27	144
R.A.F.	32970	28	60
Red Dyke	32971	81	657
Red Ore	32972	28	47
Rico	32973	74	62
Ridge	32974	28	176
Short (Amended)	32976	27	192
Snafu (Amended)	32977	27	198
Snow Belle No. 1	32978	28	110
Snow Belle No. 2	32979	28	111
Spruce No. 1	32980	77	692
Spruce No. 2	32981	77	694
Spruce No. 3	32982	77	696
Spruce No. 4	32983	77	698
Spruce No. 5	32984	77	700

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<u>CLAIM NAME</u>	<u>BLM MMC NUMBER</u>	<u>BOOK</u>	<u>PAGE</u>
Spruce No. 6	32985	77	702
Spruce No. 7	32986	77	704
Spruce No. 8	32987	77	706
Spruce No. 9	32988	77	708
Spruce No. 10	32989	77	710
Spruce No. 11	32990	77	712
Spruce No. 12	32991	77	714
Spruce No. 13	32992	77	716
Spruce No. 14	32993	77	718
Spruce No. 15	32994	77	720
Spruce No. 21	32995	77	722
Spruce No. 22	32996	77	724
Spruce No. 23	32997	77	726
Spruce No. 24	32998	77	728
Spruce No. 25	32999	77	730
Spruce No. 26	33000	77	732
Spruce No. 27	33001	77	734
Spruce No. 28	33002	77	736
Sunlight (Amended)	33004	27	194
Svenske (Amended)	33005	27	195
Toby (Amended)	33006	27	171
Troy (Amended)	33007	27	207
Val	33008	27	197
Valley View (Amended)	33009	27	177
View	33010	28	207
Viking (Amended)	33011	27	181
Iron Hill Millsite	35659	34	147
Bell of the Hill	37476	22	212
Bobby Boy	37477	26	543
Calliope	37478	15	419
Caribou	37479	81	655
Copper Lane No. 1	37480	77	529
Copper Lane No. 2	37481	77	531
Copper Lane No. 3	37482	77	533
Deer #3	37483	82	196
Emert	37484	69	563
Esmerelda	37485	74	64

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<u>CLAIM NAME</u>	<u>BLM MMC NUMBER</u>	<u>BOOK</u>	<u>PAGE</u>
Ev	37486	69	561
Ida	37487	81	679
Iron Hill	37488	22	214
Jean	37489	69	569
Lucy	37490	89	681
Monty	37491	69	565
Norge	37492	69	559
Pine No. 1	37493	80	425
Pine No. 2	37494	80	427
Pine No. 3	37495	80	429
Pine No. 4	37496	80	431
Pine No. 5	37497	80	433
Pine No. 6	37498	80	435
Pine No. 7	37499	80	437
Pine No. 8	37500	80	439
Pine No. 9	37501	80	441
Pine No. 10	37502	80	443
Pine No. 11	37503	80	445
Pine No. 12	37504	80	447
Pine No. 13	37505	80	449
Pine No. 14	37506	80	451
Pine No. 15	37507	80	453
Pine No. 16	37508	80	455
Prospect	37509	77	509
Puddles	37510	69	388
Radium	37511	18	47
Rainbow	37512	74	60
Red Dyke (Amended)	37513	27	175
Sea Fraction	37514	85	15
Sky Scraper	37515	22	213
Swan Fraction	37516	85	17
Swede	37517	69	567
Tac	37518	82	192
Tic	37519	82	190
Tinto	37520	74	58
Toe	37521	82	194
Axe 6	77165	2	1391

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<u>CLAIM NAME</u>	<u>BLM MMC NUMBER</u>	<u>BOOK</u>	<u>PAGE</u>
Rob #1	91880	3	1034
Tom #1	91881	3	1033
Tom Frac	91882	3	1035

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Iron Mountain Mine Designated Property

Situated in Mineral County, Montana,

Iron Mountain Lode, Survey Lot No. 2548A; Iron Mountain Mill Site, Survey Lot No. 2548B; Iron Tower Lode, Survey Lot No. 2547A all of Patent No. 23528,

ALSO

Kennebec Lode, Survey Lot No. 4873A; Kennebec Mill Site, Survey Lot No. 4873B all of Patent No. 28528,

ALSO

Marietta Placer, Survey Lot No. 5464 Patent No. 31897.

**Attachment B
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East Helena Designated Property

Situated in Lewis and Clark County, Montana:

"TRACT W"

Parcel 1

The SESE of Section 24 and the NE1/4 of Section 25 in Township 10 North, Range 3 West, P.M.M., Lewis and Clark County, Montana, Less and excepting there from Certificate of Survey filed under Document No. 3034433.

Parcel 2

The SW1/4NW1/4; E1/2NW1/4; NW1/4SW1/4 and the SW1/4SW1/4 lying north of the right-of-way of Highway 12 (F/K/A Hwy 10), of Section 25, Township 10 North, Range 3 West, P.M.M., Lewis and Clark County, Montana, Less and Excepting there from the following tracts of land:

Book 201 of Deeds, Page 265 for right-of-way;
Certificate of Survey filed under document No. 519440;
Certificate of Survey filed under document No. 3060332;
Block 17 of Manlove Addition to the city of East Helena;
M Book 27, page 4549; and Book 115, page 430.

Parcel 3

A Tract of land located in the SW1/4 Section 25, Township 10 North, Range 3 West, P.M.M., Lewis and Clark County, Montana, as shown on Certificate of Survey filed under Document No. 519440-T.

Parcel 4

The NE1/4SE1/4; S1/2NE1/4; SE1/4NW1/4; and the SE1/4SE1/4 lying north of the right-of-way limit of Highway 12 (F/K/A Hwy 10), of Section 26, Township 10 North, Range 3 West, P.M.M., Lewis and Clark County, Montana, less and excepting therefrom a tract of land conveyed to Northwestern Corporation as described in deed recorded in M Book 27, page 4549.

"TRACT X"

Lots 1, 2, 3 and 4 in Block 1 and Lots 1, 2 and 3 in Block 2 of the A.S. & R. ADDITION to the City of East Helena, Lewis and Clark County, Montana, as shown on plat filed under Document Number 53484, records of Lewis and Clark County, Montana.

AUS01:526233.2

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AND

A tract of land in the S1/2NW1/4NW1/4 Section 31, Township 10 North, Range 2 West, described as:

Commencing at the corner common to Sections 25, 30, 31 and 36 on the West boundary of Township 10 North, Range 2 West, P.M.M.; thence S. 0°19' E. 862.90 feet along the said Section line between Sections 31 and 36, to the point of beginning, a buried cap; thence N. 89° 40' E. 225.12 feet to a buried cap; thence S. 0°19' E. 200.00 feet; thence S. 89°40' W. 223.12 feet along North boundary of Sullivan Street to buried monument; thence N. 0°19' W. 200.00 feet along Section line between Sections 31 and 36 to the point of beginning; as shown on Certificate of Survey filed under Document Number 262681, records of Lewis and Clark County, Montana.

"TRACT Y"

TOWNSHIP 9 NORTH, RANGE 2 WEST, P.M.M., LEWIS AND CLARK COUNTY, MONTANA

SECTION 6:

W1/2NW1/4NE1/4; E1/2NE1/4NW1/4; E1/2NW1/4NE1/4; E1/2NE1/4NE1/4; W1/2NE1/4NE1/4 and that portion of Government Lots 3 and 4 lying East of Highway No. 518

AND

A tract of land in the SW1/4 of Section 31, Township 10 North, Range 2 West; NW1/4 of Section 6, Township 9 North, Range 2 West; and the NE1/4 of Section 1, Township 9 North, Range 3 West, P.M.M., Lewis and Clark County, Montana more particularly described as follows:

Beginning at the corner common to Sections 36, 31, 1 and 6 a concrete post found; then North 0°05'22" East, 1332.54 feet along the Section line to the South One-sixteenth corner a pin found; then South 89°42'34" East, 597.22 feet to a point on the West Right of Way line of Highway 518; then South 2°28'00" East, 1753.16 feet along the Right of Way to a concrete Right of Way monument found, then South 7°04'26" West, 60.67 feet along the Right of Way to a monument found; then South 2° 28' 00" East, 418.62 feet along the Right of Way to a pin set; then North 89°36'36" West, 1074.85 feet to a pin set in the center of Prickly Pear Creek; then along the center of Prickly Pear Creek the following courses; North 8°16'24" West, 184.29 feet; North 62°23'17" East, 116.04 feet; North 44°42'55" East, 203.57 feet; North 25°11'35" East, 437.76 feet; North 41°16'35" West, 155.42 feet; to a point; then South 89°36'36" East, 86.19 feet to the Point of Beginning, as shown on Certificate of Survey filed under Document Number 388483, records of Lewis and Clark County, Montana.

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Montana Custodial
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AND

A tract of land located in Lot 4, Section 31, Township 10 North, Range 2 West, P.M.M., Lewis and Clark County, described as follows:

Commencing at the Northwest corner of Section 6, a concrete post, then N 4° 09' 22" E, 1268.00 to the point of beginning. Then the following bearings and distances: North 89°05'22" East, 208.18 feet; South 0°54'38" East, 170.13 feet; South 89°05'22" West, 167.86 feet; North 14°14'38" West, 174.84 to the point of beginning, as shown on Certificate of Survey filed under Number 388483, records of Lewis and Clark County, Montana.

AND

TOWNSHIP 10 NORTH, RANGE 2 WEST, P.M.M., LEWIS AND CLARK COUNTY, MONTANA

SECTION 31:

ALL, lying South of U.S. Highway No. 12 East, LESS AND EXCEPT all of A.S. & R Addition; Certificate of Survey 262681 and Highway Route No. 518; LESS AND EXCEPT any portion of Railroad Right of Way.

AND LESS AND EXCEPT:

A tract of land in the SW1/4 of Section 31, Township 10 North, Range 2 West; NW1/4 of Section 6, Township 9 North, Range 2 West; and the NE1/4 of Section 1, Township 9 North, Range 3 West, P.M.M., Lewis and Clark County, Montana more particularly described as follows:

Beginning at the corner common to Sections 36, 31, 1 and 6 a concrete post found; then North 0°05'22" East, 1332.54 feet along the Section line to the South One-sixteenth corner a pin found; then South 89°42'34" East, 597.22 feet to a point on the West Right of Way line of Highway 518; then South 2°28'00" East, 1753.16 feet along the Right of Way to a concrete Right of Way monument found, then South 7°04'26" West, 60.67 feet along the Right of Way to a monument found; then South 2° 28' 00" East, 418.62 feet along the Right of Way to a pin set; then North 89°36'36" West, 1074.85 feet to a pin set in the center of Prickly Pear Creek; then along the center of Prickly Pear Creek the following courses; North 8°16'24" West, 184.29 feet; North 62°23'17" East, 116.04 feet; North 44°42'55" East, 203.57 feet; North 25°11'35" East, 437.76 feet; North 41°16'35" West, 155.42 feet; to a point; then South 89°36'36" East, 86.19 feet to the Point of Beginning, as shown on Certificate of Survey filed under Document Number 388483, records of Lewis and Clark County, Montana.

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AND LESS AND EXCEPT

A tract of land located in Lot 4, Section 31, Township 10 North, Range 2 West, P.M.M., Lewis and Clark County, described as follows;

Commencing at the Northwest corner of Section 6, a concrete post, then N 4° 09' 22" E, 1268.00 to the point of beginning. Then the following bearings and distances: North 89°05'22" East, 208.18 feet; South 0°54'38" East, 170.13 feet; South 89°05'22" West, 167.86 feet; North 14°14'38" West, 174.84 to the point of beginning, as shown on Certificate of Survey filed under Document Number 388483, records of Lewis and Clark County, Montana.

TOWNSHIP 10 NORTH, RANGE 2 WEST P.M.M., LEWIS AND CLARK COUNTY, MONTANA

SECTION 32: The W1/2NW1/4 lying South of railroad right of way **LESS AND EXCEPT** the SE1/4SW1/4NW1/4;

AND

SECTION 32: The SW1/4 **LESS AND EXCEPT** the E1/2NW1/4NE1/4SW1/4 and the NE1/4NE1/4SW1/4

TOWNSHIP 10 NORTH RANGE 3 WEST, P.M.M., LEWIS AND CLARK COUNTY, MONTANA

Section 36:

The N1/2, lying South of U.S. Highway No. 12; and the S1/2; **LESS AND EXCEPT** those portions deeded for railroad purposes and road right of ways. (Deed Reference Book 86, of Deeds, Page 394, Book 80, of Deeds, Page 238, Book 76, of Deeds, Page 224 and Book 61, of Deeds, Page 103)

TOWNSHIP 9 NORTH, RANGE 3 WEST, P.M.M., LEWIS AND CLARK COUNTY, MONTANA

SECTION 1: That portion of the NE1/4 lying between the line on the west branch of Prickly Pear Creek and lying East of the Great Northern Railroad right-of-way.

**Attachment B
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Trust Settlement Agreement**

"TRACT Z"

Tract B located in the NW1/4NE1/4 of Section 1, Township 9 North, Range 3 West, P.M.M., Lewis and Clark County, Montana as shown on Certificate of Survey filed under Document Number 302450.

Equipment and Other Personal Property

- Barrel Shedder American Pulverizer Company with hopper and gearbox and 100 HP, 480 3-phase motor and stand with hopper extension (14'3"L x 8' W v 9" H, 25640 lbs)
- Electrical Control Box (3'4"W x 3'6" H, 300 lbs)
- Martin Big Blaster (3) (4'H x 3'8"W x 3'8"L, 480 lbs) on pallet
- Smooth Rolls (12") (4'H x 7'L x 5'4" W, 7500 lbs) with 2, 14HP 480 3-phase electric motors
- PCL Cabinets (19 Units)
- MGM Transformer 37.5 KVA single phase 60 HZ, Type HS (17" x 28" x 27")
- Electrical Disconnects, (4 Units)
- 12" Smooth Rolls (56"W x 54"L x 60"H)
- Pallet (US electrical, 5HP, 480 3-phase)
 - (Electric Motor, 10HP, 480, 3-phase)
 - (Electric Motor, 5HP, 480, 3-phase)
 - (Bico Pulverizer Type UA)
 - Greive Electrical Dryers 2 Units, 480 3-phase 1/2 HP Fan Motor (44"W x 80"H x 76"L)
 - Green Dumpsters (2 Units) with Rod Mill cans, mixers and digital scale
 - Lintern Air Purifier (30" x 69" x 25")
 - Jaw Crusher 3HP 3-phase 480 (19"W x 53"H x 28"L)
 - Rod Mills (6 Units) 3HP 480 3-phase motors
 - Pulva Pulverizer 1/2HP 480 3-phase electrical motor
 - Pulva Pulverizer 5HP 480 3-phase (40" x 56" x 40")
 - TM Engineering Ring Pulverizer (4 Units) (38" x 65" x 24")

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- Sepor Mixer (50" x 72 " x 40")
- Roto Taps (6 Units) (34" x 31" x 32")
- Sweco Separator by Baldor (4'H x 50"W x 28"D)
- Crusher Plant
- 36" Belt Line, 49" long, 53" overall width
- 36" Belt Line, 23' long, 8 1/2' overall width, 15 HP motor and gear box
- 36" Belt Line, 53' long, 6' overall width with 10 HP motor and gear box
- 36" Belt Line, 35' long, 6" overall width with 10HP motor and gear box
- 36" Belt Line, 37' long, 6' overall width with 10 HP motor and gear box
- 36" Belt Line, 16' long, 6' overall width with 15 HP motor and gear box
- 36" Belt Line, 25' long, 6' overall width with 10 HP motor and gear box
- 36" Belt Line, 20' long, 6' overall width with 10 HP motor and gear box
- Sample Cutter (9'H x 5'W x 5'D)
- 12' Belt Line, 3' overall width with 1/2 HP motor
- 150 HP electrical motor 480
- Sample Cutter (5'H x 2 1/2'W x 3'D) with 1/2 HP motor
- Pro Screen Vibrating Screen (7'W x 16'L x 5'H)
- Hopper for screen (8'H x 15"L x 8'W) with 10 HP motor
- Hazmag Crusher (6'H x 7'L x 8'W) with Model 1010K
- 12" Sample Rolls (4'W x 4'H x 5'L) with 5 HP motor
- Electrical Control Panel (3' x 3' x 15")
- Miscellaneous steps, handrails and walkways

**2009 DOJ & EPA ENVIRONMENTAL TRUST REPORT & BUDGET PROPOSAL
EAST HELENA SMELTER**

Site Name	East Helena (Smelter)
Location	East Helena, Montana
Performing Entity	Asarco
Contact Person/ Phone & email	Linda Jacobson (EPA) (303) 312-6503 Jon Nickel (Asarco) (406) 227-4529
Decree or Order	Consent Decree: <u>United States v. Asarco</u> , CV-98-3-H-CCL
2008 Budget	Work Budget: \$2,405,000, Approved Trust Reimbursement: \$1,000,000

2008 Work Summary

Description of Work

The funds from the Trust are used to reimburse costs associated with Asarco's performance of its obligations required pursuant to the above referenced Consent Decree. The work that is subject to reimbursement is set forth below.

Work Scheduled for 2008 (19A)

Groundwater Control Interim Measures

- Monitoring, sampling, and assessment of slurry walls installed in 2006 (Acid Plant Sediment Drying Area) and in 2007 (Speiss-Dross Area). In addition,
- Implementation of the Interim Measures Work Plan Addendum (Blast Furnace Flue and Monier Flue Cleaning and Demolition and Demolition Foot Print Exposed Areas Soils Sampling).

Historic Preservation Recordation and Documentation

- Photograph, research and documentation of structures prior to demolition in accordance with procedures of the State Historic Preservation Organization (SHPO).

Phase 2 CAMU Cell

- Construction of the Phase 2I cell was conducted during Spring and early Summer 2008. Loading, operation, and maintenance of the Phase 2 cell is ongoing.

Interim Measures – Residential Well Sampling

- Three residential wells in the northwest corner of East Helena on Gail Street were monitored monthly in 2008.

**2009 DOJ & EPA ENVIRONMENTAL TRUST REPORT & BUDGET PROPOSAL
EAST HELENA SMELTER**

Supplemental Monitoring Well Installation

- Thirteen additional monitoring wells were installed in spring 2008

Post Remedial Investigation (RI)/Feasibility Study (FS) – Long-Term Monitoring Program

- Water level measurement in 135 monitoring wells (all monitoring wells in the area),
- Sampling of 122 monitoring wells,
- Annual sampling of 25 residential wells and
- Semi-annual monitoring of 6 surface water sites.

Work Remaining to be completed in 2008:

Interim Measures Work Plan Addendum

- Demolition of the blast furnace flue and Monier flue is on-going and expected to be complete Fall 2008,
- Soil sampling is scheduled to be completed in areas exposed during the cleaning and demolition project, and
- Temporary lined covers are scheduled to be installed in the footprint of the demolished structures

Phase II CAMU Cell Operation and Closure for the Season.

- Loading and operation of the Phase II CAMU cell is on-going and will be concluded at the end of the 2008 season.]
- Installation of a temporary liner cap will conclude operation of the cell for the 2008 season.

Interim Measures – Residential Well Sampling

- The target residential wells are scheduled to be sampled in October, November and December 2008.

Post RI/FS – Long-Term Monitoring Program

- The target residential wells are scheduled the fall semi-annual monitoring campaign will be conducted in November 2008.

Cost of 2008 Work to Asarco (as of 10/09/08) (19A)

Work Completed to date 2008 is as follows:

		To-Date Total Cost (\$)
Long-Term and Interim Monitoring		\$308,000
CAMU Construction and Operation		\$2,367,326
Historic Recordation and Reporting		\$100,000
Total		\$ 2,775,326

**2009 DOJ & EPA ENVIRONMENTAL TRUST REPORT & BUDGET PROPOSAL
EAST HELENA SMELTER**

Work remaining to be completed in 2008 is as follows:

		Estimated Total Cost (\$)
Long-Term and Interim Monitoring		\$ 120,000
CAMU Operation and Temp Closure		\$ 200,000
Total		\$ 320,000

Total Work under 2008 Scope:

	Eligible Trust Fund (\$)	Estimated Total Cost (\$)
Grand Total	\$1,000,000	\$3,095,000

As per the 2008 Pro Rata Reimbursement clause in the 2008 approved Budget, Asarco may seek contribution from the Trust up to a total of \$1,000,000 to pay for one-half of all contractor costs incurred in performing the covered work.

Asarco currently anticipates spending \$3,095,000 in Consent Decree related contractor costs in 2008. Asarco has submitted claims for \$223,445 to-date to the Trust, and anticipates submitting a pro rata claim before the end of the year for the eligible one-half of the total Consent Decree related contractor costs, which is currently estimated at \$1,000,000 (see table above).

**2009 DOJ & EPA ENVIRONMENTAL TRUST REPORT & BUDGET PROPOSAL
EAST HELENA SMELTER**

Site Name	East Helena (Smelter)
Location	East Helena, Montana
Performing Entity	Asarco or United States
Contact Person/ Phone & email	Linda Jacobson (EPA) (303) 312-6503 Jon Nickel (Asarco) (406) 227-4529
Decree or Order	Administrative Order on Consent signed 07/19/91 - Docket CERCLA No. 91-17
Settlement Agreement	Montana Custodial Trust Settlement Agreement – Paragraph 7(b)(vii)&(viii)
2009 Proposal	Trust: \$1,500,000

2009 Work Proposal and Budget Summary

Scope of work required to be performed in 2009 and additional years if warranted (19c)

Historical Recordation and Reporting of Remaining Structures

- Recordation and reporting will be conducted on the remaining facility structures and other features in accordance with SHPO protocols

Plant Area Hazardous Waste Cleanup

- Completion of cleanup of processing areas in consultation with the Montana Department of Environmental Quality. For budget estimation purposes, it is assumed the costs of cleanup of hazardous waste from plant processing areas is not part of the Trust reimbursable activities.
- Placement of temporary caps and covers associated with the exposed footprints of demolished structures is an activity driven by EPA and is assumed to be eligible under the Trust.

Phase II CAMU Cell Construction

- Loading, operation, and maintenance of the Phase II cell is scheduled for Spring 2009.

Phase II RFI and RA

- Preparation of a phase II RFI, including an assessment of human health and ecological risks.
- Completion of supplemental monitoring wells to complete definition of elevated selenium concentrations north of East Helena,
- Collection of supplemental media including biological data for RA purposes.

Post Remedial Investigation (RI)/Feasibility Study (FS) – Long-Term Monitoring Program

Post-RI/FS Long-Term Monitoring has been conducted bi-annually as part of the East Helena CERCLA program from 1991 through 2008. The proposed 2009 scope of work consists of a semiannual program that includes:

- Sampling of 125 monitoring wells, 6 surface water sites, and annual sampling of 25 residential

2009 DOJ & EPA ENVIRONMENTAL TRUST REPORT & BUDGET PROPOSAL EAST HELENA SMELTER

wells.

- Monthly monitoring of 3 residential wells on Gail Street that are critical for intermediate aquifer monitoring in East Helena.
- Sampling 47 on the plant site, and the EH-100 series of monitoring wells in the City of East Helena on a quarterly basis.

Pump and Treatment of Surface Water and Water from the Dross/Speiss Acid Plant

Although an active pump and treat remedy for groundwater is not proposed for the site, contingency treatment of surface water and groundwater is being planned. Treatment of surface water associated with runoff from disturbed demolition areas is likely. There also remains a potential for temporary groundwater treatment in the former speiss/dross area and/or former acid plant sediment drying area for water level control within the new slurry walls.

Repair and/or Replacement of Temporary Covers on the Plant Site.

Significant area on the plant site has been covered with temporary plastic sheeting liners. The life of this type of liner is 2 to 3 years. Replacement or repair of older liner areas such as the former sinter plant area is anticipated in 2009.

Corrective Measures Study

Following completion of the Phase II RFI and RA, a CMS is scheduled to be conducted. It is expected the CMS could be initiated in late 2009.

Estimated Cost of Work in 2009 and additional years

Year	Task	Cost (\$)
2009	Historical Recordation & Reporting on Remaining Structures	\$200,000
2009	Hazardous Waste Cleanup and Demolition	\$1,000,000
2009	Placement of Temp Covers in Demolition Foot Print Areas	\$250,000
2009	CAMU (Waste Disposal and Management)	\$100,000
2009	Phase II RFI and RA	\$300,000
2009	Long-Term Groundwater-Surface Water Monitoring Program	\$400,000
2009	Contingency Surface Water and Groundwater Treatment	\$250,000
2009	Repair and/or Replacement of Temporary Covers.	\$200,000
2009	Corrective Measures Study	\$300,000
2009	Total	\$3,000,000

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ENVIRONMENTAL CUSTODIAL TRUST AGREEMENT

BY AND AMONG

**ASARCO LLC
and
ASARCO MASTER, INC.
as Settlers,**

_____, not individually but solely in its representative capacity as
Custodial Trustee,

AND

**The United States and the State of Montana,
as Beneficiaries**

As of _____, 2008

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ENVIRONMENTAL CUSTODIAL TRUST AGREEMENT

(Montana Properties)

This Environmental Custodial Trust Agreement (the "Agreement") is made this _____ day of _____, 2008, by and among ASARCO LLC ("ASARCO") and its wholly owned subsidiary, ASARCO MASTER, INC., as debtors and debtors in possession in the Bankruptcy Case (defined below) (collectively, "Settlors"), _____, not individually but solely in its representative capacity as Custodial Trustee of the Custodial Trust established hereby (the "Custodial Trust"), and the United States and the State of Montana, acting through the Montana Department of Environmental Quality ("MDEQ") and the Montana Department of Justice ("MDOJ") (the "State"), as Beneficiaries (defined below).

RECITALS:

WHEREAS, on August 9, 2005, ASARCO filed its voluntary petition for relief under chapter 1 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.*, as amended (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division ("Bankruptcy Court") and on April 11, 2005, August 26, 2005, September 1, 2005, and October 13, 2005, various subsidiaries of ASARCO, including ASARCO MASTER, INC. filed voluntary petitions for relief in the Bankruptcy Court, which cases have been jointly administered under Case No. 05-21207 (the "Reorganization Cases");

WHEREAS, on _____, 2008, the Court entered the Confirmation Order (Docket No. _____), pursuant to which the Bankruptcy Court confirmed the Joint Plan of Reorganization for the Debtors (Docket No. _____) (as the same may be amended from time to time, the "Plan");

WHEREAS, the Confirmation Order approved the Consent Decree and Settlement Agreement Regarding the Montana Sites (the "Settlement Agreement") by and among the Debtors, the State and the United States dated _____, 2008, with respect to the Designated Properties (defined below) located in Montana;

WHEREAS, the Plan provides for the transfer of the Designated Properties, including the Attendant Property Interests (defined below), to the Custodial Trust to be administered by the Custodial Trustee pursuant to this Agreement and the Settlement Agreement;

WHEREAS, in accordance with Article VII of the Plan and Article IV of the Settlement Agreement, the Custodial Trust is established for the purposes of (a) owning the Designated Properties and carrying out administrative and property management functions related to the Designated Properties, (b) managing and/or funding the implementation of future Environmental Actions with respect to the Designated Properties, (c) paying certain future oversight costs, and (d) ultimately selling, transferring or otherwise disposing of the Designated Properties, as provided in the Settlement Agreement;

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WHEREAS, the Custodial Trust is to be funded in the amount set forth in the Settlement Agreement;

WHEREAS, the Confirmation Order and/or other orders of the Court memorialized the Court's approval of the Funding (defined below) of all the Custodial Trust Accounts and approved and provided for the implementation of the Settlement Agreement;

WHEREAS, all conditions to the Effective Date, as set forth in the Plan and the Confirmation Order, have been satisfied or waived;

WHEREAS, in accordance with the Plan and the Confirmation Order, this Agreement and the Settlement Agreement govern the Custodial Trust, which is created pursuant to, and to effectuate, the Plan and the Settlement Agreement;

WHEREAS, upon its formation the Custodial Trust is intended to qualify as a qualified settlement fund (for which no grantor trust election has been made) pursuant to section 1.468B-1 of the Treasury Regulations promulgated under the Internal Revenue Code ("Treasury Regulations"), and as a tax-exempt settlement fund (to the extent that the beneficial interests in the Custodial Trust are owned by "government entities," within the meaning of Section 468B(g)(2) of the Internal Revenue Code) pursuant to Section 468B(g)(2) of the Internal Revenue Code; and

WHEREAS, the Custodial Trust shall be the exclusive holder of the assets described herein for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3);

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements contained herein and in the Plan, the Settlement Agreement and Confirmation Order, the Parties hereto, including the Custodial Trustee, for itself and for the Custodial Trust, hereby affirm, accept and agree to the terms, conditions, and requirements set forth in the Settlement Agreement, including all terms regarding the creation, management, use and disposition of the Custodial Trust and the Custodial Trust Assets, and the rights, roles, responsibilities, liabilities, and protections of the Parties with respect to the Custodial Trust, the Funding, and the Designated Properties. The Parties further hereby agree as follows to supplement and implement the terms of the Settlement Agreement:

ARTICLE 1
DEFINITIONS

1.1 Definitions.

Capitalized terms used but not otherwise defined in this Agreement shall have the respective meanings given, as applicable, in the Plan or the Confirmation Order. The following terms as used in this Agreement shall have the definitions given below:

1.1.1 "Agreement" has the meaning given in the preamble.

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- 1.1.2 “Attendant Property Interests” means all appurtenances, rights, easements, rights-of-way, mining rights (including unpatented mining and mill site claims), mineral rights, mineral claims, riparian rights, water rights, water claims, and water allocations or other interests related to the Designated Properties except: (a) anything Debtors are required to transfer to the purchaser of the operating assets under the Plan; and (b) equipment and other items of personal property listed in Attachment C to the Settlement Agreement.
- 1.1.3 “Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of Texas Corpus Christi Division.
- 1.1.4 “Beneficiaries” means the United States and the State.
- 1.1.5 “CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, as amended.
- 1.1.6 “Confirmation Order” means _____.
- 1.1.7 “Court” means the Bankruptcy Court or if the Bankruptcy Court abstains from exercising jurisdiction or is otherwise without jurisdiction over any matter arising out of this Agreement, a United States District Court having competent jurisdiction with respect to such matters, or, as provided in the Settlement Agreement, the U.S. District Court for the District of Montana.
- 1.1.8 “Custodial Trust” shall mean the trust established pursuant to the Settlement Agreement and this Agreement.
- 1.1.9 “Custodial Trust Account” has the meaning given in Section 2.1.3 hereof.
- 1.1.10 “Custodial Trust Administrative Account” means the Custodial Trust Account established to hold funds to pay for administrative, property management, and other costs, as approved by the State and United States Department of Justice (“USDOJ”) in accordance with the budget approval process set forth in this Agreement and in Subparagraphs 6.d and 8.a of the Settlement Agreement.
- 1.1.11 “Custodial Trust Assets” means (a) those assets and properties, including the Funding and the Designated Properties and Attendant Property Interests to be transferred to the Custodial Trust pursuant to the Plan, the Confirmation Order, the Settlement Agreement, and this Agreement, and (b) such other assets acquired or held by the Custodial Trust from time to time pursuant to the Plan, the Confirmation Order, the Settlement Agreement, this Agreement, or an order of the Court.

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- 1.1.12 "Custodial Trust Cleanup Account" means each of the Custodial Trust Accounts established pursuant to Section 2.1.3 to hold funds to pay for future Environmental Actions as selected, approved, and authorized by the Lead Agency (as defined in the Settlement Agreement) and certain future oversight costs of the Governments as provided in the Settlement Agreement for each Designated Property.
- 1.1.13 "Custodial Trust NRD Account" means each of the Custodial Trust Accounts established pursuant to Section 2.1.3 to hold funds to pay for future natural resource restoration that has been selected by DOI and related oversight costs as provided in the Settlement Agreement for certain of the Designated Properties.
- 1.1.14 "Custodial Trust Parties" shall mean the Custodial Trust, the Custodial Trustee, the Custodial Trustee's shareholders, officers, directors, employees, agents, or other parties, professionals or representatives employed by the Custodial Trust or the Custodial Trustee. "Custodial Trust Parties" shall not include professionals, advisors, consultants, or any other parties who provide goods or services under contract but who are not employees of the Custodial Trust or the Custodial Trustee.
- 1.1.15 "Custodial Trust Proceeds" means the proceeds of any liquidation, sale, lease, recovery or other disposition of or other proceeds in respect of the Custodial Trust Assets.
- 1.1.16 "Custodial Trustee" shall mean the Custodial Trust by and through its trustee not individually but solely in its representative capacity.
- 1.1.17 "Debtors" shall have the meaning given in the Plan.
- 1.1.18 "Designated Properties" means the ASARCO-owned properties as set forth and described in Paragraph 1 of the Settlement Agreement, including, without limitation, all fixtures, improvements, equipment, and personal property to be conveyed as described in Paragraph 5.a of the Settlement Agreement.
- 1.1.19 "DOI" means the United States Department of the Interior and any successor departments or agencies of the United States.
- 1.1.20 "Effective Date" means the effective date of this Agreement, which shall be the first business day after the later of (i) the date this Agreement is executed by all Parties to this Agreement; (ii) the date the Plan Effective Date has occurred; and (iii) the date the Settlement Agreement Effective Date has occurred.

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- 1.1.21 “Environmental Actions” mean any and all environmental activities related to the Designated Properties, including but not limited to response or remedial actions, corrective action, closure, or post-closure care, natural resource restoration, reclamation, investigations, studies, remediation, interim actions, final actions, emergency actions, water treatment, implementation of engineered structures and controls, obtaining and maintaining reasonable financial assurance, monitoring, repair and replacement of engineered structures, monitoring equipment and controls, operation and maintenance, and implementation, operation and maintenance of institutional controls. “Environmental Actions” also include activities or costs related to releases of hazardous substances, hazardous waste, or hazardous constituents from any portion of the Designated Properties, including all areas affected by natural migration of such hazardous substances, hazardous waste, or hazardous constituents from the Designated Properties.
- 1.1.22 “Environmental Costs” mean the costs and expenses of implementing Environmental Actions and the costs of payment of certain oversight costs of a Beneficiary agency as provided in the Settlement Agreement with respect to a Designated Property.
- 1.1.23 “Environmental Law” means any applicable federal, state or local law, statute, ordinance, rule, regulation or code, any license, permit, authorization, administrative or court order, judgment, decree or injunction, including all common law, related to pollution, protection or restoration of health, safety or the environment, reclamation of mined lands, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of pollutants or Hazardous Substances, including, without limitation, CERCLA; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, *et seq.*; the Clean Air Act, 42 U.S.C. Section 7401, *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, *et seq.*; the Toxic Substances Control Act, 15 U.S.C. Section 2601, *et seq.*; the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11001, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. Section 300f, *et seq.*; the Oil Pollution Act of 1990, 33 U.S.C. Section 2701 *et seq.*; and the Occupational Safety and Health Act, 29 U.S.C. 651, *et seq.*, and any applicable state or local law counterparts, as the same may be reauthorized or amended from time to time.
- 1.1.24 “Funding” shall have the meaning given in Section 2.1.2 hereof.
- 1.1.25 “Hazardous Substances” shall mean all materials, substances, or wastes defined, designated, regulated or classified as hazardous, toxic or radioactive, under any Environmental Laws, whether by type or by

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quantity, and shall include petroleum or any derivative or by-product thereof and asbestos containing materials.

- 1.1.26 "Lead Agency" with respect to a Designated Property shall mean the Lead Agency for such Designated Property as specified in the Settlement Agreement.
- 1.1.27 "Parties" shall mean the Settlers, Custodial Trustee and Beneficiaries.
- 1.1.28 "Person" means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, charitable foundation, unincorporated organization, government or any agency or political subdivision thereof or any other entity.
- 1.1.29 "Plan" means the Joint Plan of Reorganization for the Debtors under Chapter 11 of the United States Bankruptcy Court dated _____, and approved by order of the Bankruptcy Court on _____.
- 1.1.30 "Plan Effective Date" shall have the same meaning as the term "Effective Date" as such term is defined in the Plan.
- 1.1.31 "Reorganization Cases" means _____.
- 1.1.32 "Settlement Agreement" means that certain Consent Decree and Settlement Agreement Regarding the Montana Sites executed by the Beneficiaries and the Settlers on _____, 2008, and approved by the Bankruptcy Court.
- 1.1.33 "Settlement Agreement Effective Date" shall have the same meaning as the term "Effective Date" as such term is defined in the Settlement Agreement.
- 1.1.34 "State" means the State of Montana, acting through the Montana Department of Environmental Quality ("MDEQ") and the Montana Department of Justice ("MDOJ").
- 1.1.35 "United States" means the United States of America on behalf of agencies and departments named in the Settlement Agreement.
- 1.1.36 "USDOJ" means the United States Department of the Interior and any successor departments or agencies of the United States.
- 1.1.37 "USEPA" means the United States Environmental Protection Agency and any successor departments or agencies of the United States.

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ARTICLE 2
THE CUSTODIAL TRUST

2.1 Creation of and Transfer of Assets to the Custodial Trust.

- 2.1.1 Pursuant to the Plan, the Confirmation Order, and the Settlement Agreement, the Parties hereby establish, on behalf of the Beneficiaries named herein, the Custodial Trust, and Settlers hereby transfer, assign, and deliver to the Custodial Trust, on behalf of the Beneficiaries, all fee ownership or other interests of Settlers in and to the Custodial Trust Assets. Debtors shall retain no ownership or other interest whatsoever in the Designated Properties. The transfer of ownership shall be completed by the Parties as provided in the Settlement Agreement. The Custodial Trust hereby accepts and agrees to hold the Custodial Trust Assets in the Custodial Trust for the benefit of the Beneficiaries for the purposes described in Section 2.2 below, subject to the terms of the Plan, Confirmation Order, Settlement Agreement, this Agreement, and any applicable orders of the Court.
- 2.1.2 On the Effective Date, the Settlers shall cause to be transferred to or at the direction of the Custodial Trustee cash in the amount of \$138,300,000, which constitutes the "Funding" and represents the aggregate amounts approved by the Court in the Confirmation Order as sufficient to pay the Environmental Costs and the costs of administering the Custodial Trust.
- 2.1.3 Upon receipt of the Designated Properties and the Funding, the Custodial Trustee shall set aside, in separate segregated trust accounts, the Funding for each of the Custodial Trust Cleanup Accounts and the Custodial Trust NRD Accounts, as specified in the Settlement Agreement for each Designated Property. The Custodial Trustee shall also set aside the Funding provided for general administration in a separate Custodial Trust Administrative Account, which account shall not include any of Designated Properties. The separate accounts are referred to in this Agreement individually as a "Custodial Trust Account" and collectively as the "Custodial Trust Accounts." The Funding and the use of funds in each of the Custodial Trust Accounts shall be as set forth in the Settlement Agreement. The income and gains from any investment, use or disposition of the Custodial Trust Assets shall be allocated, paid and credited to the respective Custodial Trust Account and shall be used for the same purposes as the principal, as provided in this Agreement and the Settlement Agreement.
- 2.1.4 For all income tax purposes, the Custodial Trustee and Settlers shall treat the transfer of the Custodial Trust Assets by Settlers to the Custodial Trust as a transfer to a qualified settlement fund pursuant to section 468B of the Internal Revenue Code and related Treasury Regulations. The Custodial

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Trustee will seek to have the Custodial Trust treated as a "qualified settlement fund" as that term is defined in Treasury Regulation section 1.468B-1 and as a tax-exempt settlement fund (to the extent that the beneficial interests in the Custodial Trust are owned by "government entities," within the meaning of Section 468B(g)(2) of the Internal Revenue Code) in accordance with Section 468B(g)(2) of the Internal Revenue Code. The Custodial Trustee will not elect to have the Custodial Trust treated as a grantor trust. The Custodial Trust will be treated as a separate taxable entity. The Custodial Trustee shall cause any property taxes imposed on property owned by the Custodial Trust to be paid using assets of the Custodial Trust Administrative Account. The Custodial Trustee shall cause any taxes imposed on the earnings of the Custodial Trust to be paid out of such earnings and shall comply with all tax reporting and withholding requirements imposed on the Custodial Trust under applicable tax laws.

2.2 Objective and Purpose.

- 2.2.1 The exclusive purposes and functions of the Custodial Trust are to own the Designated Properties, carry out administrative and property management functions related to the Designated Properties, manage and/or fund implementation of future Environmental Actions approved by the Lead Agencies with respect to the Designated Properties (or approved by DOI for the Custodial Trust NRD Accounts), pay certain future oversight costs, and ultimately to sell, transfer or otherwise dispose of all or part of the Designated Properties, if possible, all as provided in the Settlement Agreement, and subject to the limitations described in Section 4.5 below.
- 2.2.2 The Custodial Trust is established pursuant to Article VII of the Plan and approved by the Bankruptcy Court for the sole purpose of resolving claims asserting environmental liabilities of Settlers with respect to the Designated Properties. The Bankruptcy Court shall retain continuing jurisdiction over the Custodial Trust. The Custodial Trust satisfies all the requirements of, and is intended by the Parties to be classified as, a qualified settlement fund (for which no grantor trust election has been made) pursuant to section 468B of the Internal Revenue Code and related Treasury Regulations. It is also intended that the Custodial Trust be classified as a tax-exempt settlement fund (to the extent that the beneficial interests in the Custodial Trust are owned by "government entities," within the meaning of Section 468B(g)(2) of the Internal Revenue Code) pursuant to Section 468B(g)(2) of the Internal Revenue Code.

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2.3 Holder of Custodial Trust Assets.

The Custodial Trust shall be the exclusive holder of the Custodial Trust Assets and Custodial Trust Accounts described herein for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012 (b)(3).

2.4 Management of Custodial Trust Assets.

2.4.1 Consistent with the Plan, this Agreement, and the Settlement Agreement, the Custodial Trust shall use the Custodial Trust Cleanup Accounts, as authorized by the Lead Agency through the budget process, to perform or fund future Environmental Actions and oversight costs approved by the Lead Agency pursuant to CERCLA, RCRA, or other state or federal statutes applicable to a particular Designated Property. The Custodial Trustee shall use the Custodial Trust NRD Accounts to fund DOI natural resource restoration and related oversight costs that have been approved by DOI. The Custodial Trust shall use the Custodial Trust Administrative Account to fund the administrative, property management, and other costs of the Custodial Trust that have been approved by the State and USDOJ as provided in the Settlement Agreement.

2.4.2 The Custodial Trustee may enter into a consent decree or consent order with the United States and/or the State and may perform work pursuant to Unilateral Administrative Orders issued by the Lead Agency to facilitate implementation of Section 2.4 with respect to a Designated Property. The Custodial Trustee shall assume the obligations of the Debtors under certain existing agreements, decrees, and orders as provided in Section VI of Settlement Agreement, and is to satisfy those obligations as approved or required by the respective Lead Agency consistent with the terms of the Settlement Agreement.

2.4.3 If funds in a Custodial Trust Account are not needed, as determined in accordance with Subparagraphs 6.n, 6.o, 6.p, and 6.q of the Settlement Agreement, such funds may be used or transferred to another account as provided in the Settlement Agreement. By no later than seven years after the Effective Date, the Custodial Trustee shall provide USDOJ and the State an update of anticipated future Administrative Costs of the Custodial Trust. At any time, after consultation with the Custodial Trustee, USDOJ and the State may jointly instruct in writing that any conservatively projected surplus funding in the Custodial Trust Administrative Account be transferred to one or more of the Custodial Trust Cleanup Accounts established under this Agreement for a Designated Property with remaining actions to be performed and a need for additional funding.

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2.5 Investment and Safekeeping of Custodial Trust Assets.

2.5.1 The Custodial Trust Assets, until sold as provided herein and in the Plan and the Settlement Agreement, shall be held in trust and segregated. Investments of any moneys held by the Custodial Trust shall be administered in a manner consistent with the standards and requirements applicable to a trustee under the Montana Uniform Prudent Investor Act, §§ 72-34-601 *et seq.*, Mont. Code Ann., and, further, with the purpose of deriving a reasonable income from the Custodial Trust Assets pending periodic distributions in accordance with Article III hereof, taking into account the need for the safety and liquidity of principal required by the purposes of the Custodial Trust, and not of speculating or carrying on of any business for profit or derivation of gains therefrom. However, the right and power of the Custodial Trustee to invest and reinvest the Custodial Trust Assets shall be limited to the right and power to invest and reinvest any part or all of such assets in the following investment vehicles, provided that at least 75% of the funds in each Custodial Trust Account shall, at any given time, be invested in categories (1) and (2):

(1) marketable obligations issued by the United States of America or an agency thereof;

(2) certificates of deposit with a domestic office of any national or state bank or trust company organized under the laws of the United States of America or any state therein and having capital, surplus, and undivided profits of at least \$750,000,000 or in such institutions not meeting this specified capital requirement to the extent that the deposits are federally insured;

(3) no-load mutual funds;

(4) a diversified portfolio of equities traded on a recognized national exchange that meet the standards for publicly listed companies;

(5) a diversified portfolio of bonds. The overall average rating of the portfolio shall have a rating of Double A or better, with no individual bond rated below A, exclusive of any bond insurance;

(6) money market funds.

The Custodial Trustee shall be under no liability for interest or producing income on any moneys received by the Custodial Trust hereunder and held for distribution or payment as provided in this Agreement, except as such interest or income shall actually be received by the Custodial Trust.

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2.5.2 The Custodial Trustee is expressly prohibited from holding any or all of the Funding in a common, commingled or collective trust fund and from holding any or all of the Funding in a common, commingled or collective trust fund with the assets of any other entity.

2.5.3 Nothing in this Section 2.5 shall be construed as authorizing the Custodial Trustee to cause the Custodial Trust to carry on any business or to divide the gains therefrom, including without limitation, the business of an investment company, a company "controlled" by an "investment company," required to register as such under the Investment Company Act of 1940, as amended. The sole purpose of this Section 2.5 is to authorize the investment of the funds in the Custodial Trust Accounts or any portions thereof as may be reasonably prudent pending use of the proceeds for the purposes of the Custodial Trust.

2.5.4 As provided in Paragraph 14 of the Settlement Agreement, the Custodial Trustee may rely, and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by them to be genuine and to have been signed or presented by the proper Party or Parties.

2.6 Insurance Policy to Cover Future Response Actions.

Only at the direction of the United States and the State, shall the Custodial Trustee investigate the possible purchase of an insurance policy to cover future Environmental Actions at one or more of the Designated Properties. If, and only if, the United States and the State direct the Custodial Trustee in writing to purchase such insurance, shall the Custodial Trustee use Custodial Trust Assets to purchase such insurance.

2.7 Access and Deed Restrictions.

The Custodial Trust shall provide the United States and the State and their representatives and contractors with reasonable access at all reasonable times to the Designated Properties for the purposes of conducting Environmental Actions or related activities at or near the Designated Properties. The Custodial Trustee shall implement and ensure the maintenance of any institutional controls and shall execute and record any easements, deed restrictions or other appropriate documents relating to land use requested by the Lead Agency with respect to any of the Designated Properties, as provided in Paragraphs 8.d and 9 of the Settlement Agreement. Any existing easements or deed restrictions of record as to any Designated Property prior to the Effective Date of this Settlement Agreement shall survive the Settlement Agreement. The Custodial Trustee shall abide by the terms of any institutional controls or deed restrictions in place or of record as to any Designated Property.

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2.8 Accounting.

The Custodial Trustee shall maintain proper books, records, and accounts relating to all transactions pertaining to the Custodial Trust, and the assets and liabilities of, and claims against or assumed by, the Custodial Trust in such detail and for such period of time as may be necessary to enable the Custodial Trustee to make full and proper accounting in respect thereof in accordance with Article 6 below and to comply with applicable provisions of law and good accounting practices. Except as otherwise provided herein or in the Settlement Agreement, or as required by an order of the Court, the Custodial Trustee shall not be required to file any accounting with the Court or seek the approval of the Court with respect to the administration of the Custodial Trust, or as a condition for making any payment or distribution out of the Custodial Trust Assets. Beneficiaries shall have the right upon fourteen (14) days' prior written notice delivered to the Custodial Trustee to inspect such books and records.

2.9 Liability.

As provided in Paragraph 8 of the Settlement Agreement, the Custodial Trust Parties are deemed to have resolved their civil liability under CERCLA, RCRA and similar State statutes to the United States and the State, and have protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2) or similar state law for matters addressed in this Agreement and in the Settlement Agreement, provided, however, that nothing in this Agreement or the Settlement Agreement shall be construed to allow the Custodial Trustee Parties to violate this Agreement or the Settlement Agreement or any State, federal or local law, nor to limit the enforcement authorities of the United States or the State. The Custodial Trust Parties shall have the benefits of all the liability protections set forth in Section IV of the Settlement Agreement. However, in the event that the Custodial Trust or the Custodial Trustee exacerbates conditions related to any Designated Property, violates a provision of this Agreement or the Settlement Agreement, or otherwise does not adequately perform under this Agreement or the Settlement Agreement, the State and USDOJ may jointly (1) direct that all remaining funds and future recoveries in the Custodial Trust for a Designated Property be paid to the Lead Agency for the Designated Property, all remaining funds in the Custodial Trust NRD Account for a Designated Property be paid to DOI, to be used in accordance with the terms of the Settlement Agreement, and all remaining funds in the Custodial Trust Administrative Account be transferred as jointly directed by the State and USDOJ; or (2) appoint a new custodial trustee. Upon joint written notice to the Custodial Trustee that the State and USDOJ are directing such a payment of funds or appointing a new custodial trustee, the Custodial Trustee shall promptly comply with all joint written instructions to accomplish such payment or transfer of assets and authority to a new custodial trustee, and will promptly, and in any event within thirty calendar days, execute all documents and deliver all assets and records as directed in the joint instructions.

2.10 Termination.

Consistent with the terms of the Settlement Agreement, the Custodial Trustee shall not unduly prolong the duration of the Custodial Trust and shall at all times endeavor to perform or fund Environmental Actions as selected, approved, and authorized by the Lead Governmental

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Agency for each Designated Property and to effect the distribution of Custodial Trust Assets for the performance of Environmental Actions in accordance with the terms of the Settlement Agreement, and to terminate the Custodial Trust as soon as practicable consistent with the Plan, this Agreement, and the Settlement Agreement.

2.11 Property Disposition.

The United States, the State, or a local governmental unit that is a designee of the State, may at any time propose in writing to take ownership of any Designated Property or any part thereof in accordance with Paragraph 10 of the Settlement Agreement. The Custodial Trustee may at any time seek approval for the sale or lease or other disposition of all or part of a Designated Property in accordance with Paragraph 11 of the Settlement Agreement. In any transfer or disposition of all or part of a Designated Property, the Custodial Trustee shall comply with the approval process and other requirements set out in Paragraphs 10 and 11 of the Settlement Agreement.

ARTICLE 3
WORK AND DISTRIBUTIONS

3.1 Trust Accounts.

The Custodial Trustee shall establish, maintain and hold the Custodial Trust Accounts, as provided in the Settlement Agreement and Section 2.1.3 of this Agreement, to administer the Custodial Trust Assets and distributions therefrom.

3.2 Payments by the Custodial Trust.

The Custodial Trustee shall provide the United States and the State with annual balance statements and proposed budgets as described in Section 3.2.1 and 3.2.3 of this Agreement. The Custodial Trustee shall not pay any expense that has not been provided for in the applicable budget and approved by the Lead Agency for the Custodial Trust Cleanup Accounts, by DOI for the Custodial Trust NRD Accounts, or jointly by the State and USDOJ for the Custodial Trust Administrative Account.

3.2.1 Administrative Expenses of the Custodial Trust.

Consistent with the requirements of Subparagraph 8.a of the Settlement Agreement, the Custodial Trustee shall provide the United States and the State with annual balance statements and budgets for the Custodial Trust Administrative Account. The first budget for the remainder of the current calendar year and the next calendar year shall be prepared within thirty (30) days following the Effective Date. To facilitate agency review and consultation, the Custodial Trustee shall thereafter submit a preliminary proposed budget by November 1 of each year for the following calendar year. After considering any comments provided by USDOJ and the State, the proposed annual budget shall be provided on or before January 1 of each calendar year during the term of the Custodial Trust. The proposed budget may be approved or disapproved in whole or in part by USDOJ and the State. If disapproved, such budget shall be revised and resubmitted

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as expeditiously as possible. No administrative expenses may be incurred or paid by the Custodial Trustee that are inconsistent with the approved budget, provided, however, that USDOJ and the State may jointly approve budget modifications between annual budget proposals. Each annual budget shall include a future year forecast of administrative expenditures, with annual details for at least the next three years (or such longer period as USDOJ and the State shall reasonably request). The Custodial Trust shall regularly, but not less often than annually, and otherwise upon the reasonable request of the United States or the State, provide documentation to the United States and the State to substantiate compliance with the applicable approved budget and application of Custodial Trust Assets consistently with the terms of the Plan, this Agreement and the Settlement Agreement.

3.2.2 Remuneration for Custodial Trustee's Start-Up Fees and Expenses.

The Custodial Trustee shall be entitled to remuneration from the Custodial Trust Administrative Account of up to \$_____ for [his/its] fees and expenses in connection with the formation of the Custodial Trust prior to the Effective Date.

3.2.3 Cleanup and NRD Expenses of the Custodial Trust.

Consistent with the requirements of Subparagraph 6.e of the Settlement Agreement, the Custodial Trustee shall prepare balance statements and annual budgets of projected expenditures from each of the Custodial Trust Cleanup Accounts and Custodial Trust NRD Accounts. Each budget shall reflect any determinations made by the Lead Agency (or, in the case of the Custodial Trust NRD Accounts, DOI) regarding which Environmental Actions will be performed directly by Custodial Trust Parties and their contractors and which Environmental Actions will be funded by the Custodial Trust but be performed by the Lead Agency or others designated by the Lead Agency (or, in the case of the Custodial Trust NRD Accounts, performed by DOI or others designated by DOI). The first budgets for the remainder of the current calendar year and the next calendar year shall be prepared within sixty (60) days following the Effective Date. Thereafter the Custodial Trustee shall submit a preliminary proposed budget for each account by November 1 of each year for the following calendar year. After considering any comments provided by the Lead Agency or DOI, as applicable, the proposed annual budgets shall be provided on or before January 1 for each calendar year during the term of the Custodial Trust. The Lead Agency shall have the authority to approve or disapprove the proposed budget for each Custodial Trust Cleanup Account. DOI shall have the authority to approve or disapprove the proposed budgets for the Custodial Trust NRD Accounts. If disapproved, a budget shall be revised and resubmitted as expeditiously as possible. No expenses may be incurred or paid by the Custodial Trustee that are inconsistent with an approved budget, unless the Lead Agency or DOI, as applicable, approves a budget modification; provided, however, that the Custodial Trustee may incur or pay ongoing or recurring expenses approved in the prior year's budget that occur between the time a proposed annual budget is submitted and the time it is approved. Further, by January 1 of each year during the term of the Custodial Trust, the Custodial Trustee shall prepare and submit to the Beneficiaries an annual report with respect to each of the Custodial Trust Cleanup Accounts and Custodial Trust NRD Accounts. Each annual report shall pertain to the prior calendar year. Within nine (9) months after closing or termination of a particular Custodial Trust Account, the Custodial Trustee shall prepare and submit to the

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Beneficiaries a final report covering the period from the most recent annual report to the closing or termination of the Custodial Trust Account.

3.2.4 Disbursements from Custodial Trust Cleanup Accounts.

The Custodial Trustee shall pay funds from a Custodial Trust Cleanup Account provided for in an approved budget to the Lead Agency (or another governmental agency for oversight costs if its assistance has been requested by the Lead Agency and such oversight costs are included in the approved budget) making a written request for funds within ten (10) days of receipt of such request. Any written request shall specify the purpose of the funds, and shall certify that the funds will be used only for Environmental Actions selected and approved by the Lead Agency after the Effective Date or oversight costs incurred after the Effective Date by the Lead Agency or another governmental agency as provided above. The Lead Agency shall maintain any such funds received pending expenditure in a site-specific account dedicated to cleanup of the Designated Property corresponding to the Custodial Trust Cleanup Account from which the disbursement was made, and shall expend such funds and interest solely for Environmental Actions for that Designated Property. Any funds so received that are to be held by the Lead Agency for more than sixty ("60") days shall be maintained in an interest-bearing account, with the interest retained and used only for the same purposes as the principal. If the Lead Agency has requested assistance from another governmental agency as provided above, the Lead Agency shall ensure that the funds are included in the approved budget for such oversight costs.

3.2.5 Work by Custodial Trustee under Custodial Trust Cleanup Accounts.

In the case of requests by the Lead Agency for the Custodial Trustee to use the funds and interest to perform work or manage the performance of work, the Custodial Trustee shall utilize the funds and interest from the respective Custodial Trust Cleanup Account to undertake such work promptly, in accordance with the schedule and work as approved by the Lead Agency. All activities undertaken by the Custodial Trustee pursuant to this Agreement shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. The Custodial Trustee shall require appropriate liability insurance from each contractor hired to perform work.

3.2.6 Disbursements from Custodial Trust NRD Accounts.

The Custodial Trustee shall pay funds from a Custodial Trust NRD Account to DOI within 10 days of a written request by DOI. Such written request shall specify the natural resource restoration for which DOI will use the funding requested. DOI shall maintain any such funds pending expenditure in accordance with this Agreement in the DOI Natural Resource Damage Assessment and Restoration Fund, Account No. 14X5198. A separate site-specific numbered account for the corresponding Designated Property shall be established within the DOI's Natural Resource Damage Assessment and Restoration Fund. DOI shall expend the funds in these accounts, including all interest earned on such funds, solely on natural resource restoration and related oversight costs for that site.

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3.2.7 Coordination with US Forest Service.

The Custodial Trust shall administer, hold, or dispose of (including abandonment) unpatented mining claims in accordance with the 1872 Mining Law, 30 U.S.C. §§ 22 et seq., and the Federal Land Policy and Management Act, 43 U.S.C. §§ 1701 et seq. All actions of the Custodial Trust, the State, and the Forest Service under this Settlement Agreement as to National Forest Service Lands within the Upper Blackfoot Mining Complex Site shall be consistent with the "Watershed Restoration Agreement between the State of Montana and the US Department of Agriculture Forest Service, North Region, for the Cleanup of the National Forest System Portion of the Upper Blackfoot Mining Complex Site." Although it is not anticipated that actions will be taken by the Custodial Trust on property administered by the Forest Service or any other federal land management agency, any actions by the Custodial Trust on property administered by the Forest Service or any other federal land management agency can only be taken after the written concurrence of the federal agency.

3.3 Liens by Government.

Notwithstanding anything to the contrary in this Article 3, the Custodial Trust hereby grants to the Custodial Trustee, United States, and the State a lien on and security interest in the Custodial Trust Assets to secure the payment of all amounts owed to, accrued or reserved on account of the Custodial Trust or to be retained by the Custodial Trustee hereunder or otherwise due hereunder. The lien granted shall be a first priority lien, subject only to any existing prior liens of the USEPA or MDEQ for response, remedial, corrective or reclamation actions. The Custodial Trust agrees to take appropriate actions and execute appropriate documents to perfect the Custodial Trustee's, United States' and the State's liens and security interests hereunder.

3.4 Manner of Payment.

Cash payments made by the Custodial Trust pursuant to the Settlement Agreement and this Agreement shall be in United States dollars by checks drawn on a domestic bank selected by the Custodial Trustee, or by wire transfer from a domestic bank in accordance with wiring instructions provided by the payee, at the option of the Custodial Trustee.

ARTICLE 4
THE CUSTODIAL TRUSTEE

4.1 Appointment.

- 4.1.1 The Settlers, after approval by the United States and the State, hereby appoint _____, not individually but solely in its representative capacity as Custodial Trustee, to serve as the Custodial Trustee, and the Custodial Trustee hereby accepts such appointment and agrees to serve in such representative capacity, effective upon the Effective Date of this Agreement. Subject to the provisions of Section 4.8 herein, the term of the Custodial Trustee shall be for five years at which time the Custodial Trustee may be re-appointed for a specified term or terminated. Any

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successor Custodial Trustee shall be appointed by the Beneficiaries in accordance with Section 4.9 of this Agreement. If the Custodial Trustee is not reappointed and no successor Custodial Trustee has been appointed by the expiration of the Custodial Trustee's term, the Custodial Trustee shall continue to serve until the successor has been appointed.

- 4.1.2 After consultation with the United States and State, the Custodial Trust is authorized to obtain the services of an environmental consultant (the "Consultant") to assist in the implementation of any future Environmental Actions that are to be implemented by the Custodial Trustee as provided in this Agreement and the Settlement Agreement. The Consultant shall obtain environmental, general and professional liability insurance in the sum of \$25,000,000 or such lesser amount as agreed to by the Custodial Trust after consultation with the United States and the State. The beneficiary of the insurance policies shall be the Custodial Trust, and the insurance shall cover negligence committed by the Consultant in implementing the future Environmental Actions or any other negligence committed by the Consultant. The legal relationship of the Consultant to the Custodial Trust and Custodial Trustee shall be that of an independent contractor professional, not that of an entity employed by the Custodial Trust or the Custodial Trustee. The Consultant shall not be deemed a Custodial Trust Party under this Agreement or the Settlement Agreement.

4.2 Generally.

The Custodial Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purposes of the Custodial Trust and the Settlement Agreement and not otherwise. The Custodial Trustee shall have the authority to bind the Custodial Trust, and any successor Custodial Trustee, or successor or assign of the Custodial Trust, but shall for all purposes hereunder be acting in its representative capacity as Custodial Trustee and not individually. Notwithstanding anything to the contrary contained herein, the Custodial Trustee shall not be required to take action or omit to take any action if, after the advice of counsel, the Custodial Trustee believes in good faith such action or omission is not consistent with the Custodial Trustee's fiduciary duties.

4.3 Powers.

In connection with the administration of the Custodial Trust, except as otherwise set forth in this Agreement, the Plan, or the Settlement Agreement, the Custodial Trustee is authorized to perform any and all acts necessary to accomplish the purposes of the Custodial Trust. The powers of the Custodial Trust shall, without any further Court approval or order, include, without limitation, each of the following: (i) to receive, manage, invest, supervise and protect the Custodial Trust Assets, withdraw, make distributions and pay taxes and other obligations owed by the Custodial Trust or the Custodial Trust Accounts from funds held by the Custodial Trustee and/or the Custodial Trust (or the Custodial Trust Accounts) in accordance with this Agreement and the Settlement Agreement, and withhold and pay to the appropriate taxing authority any

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withholding taxes on distributions from the Custodial Trust; (ii) to engage employees and professional Persons to assist the Custodial Trust and/or the Custodial Trustee with respect to the responsibilities described herein; (iii) to make distributions of the Custodial Trust Assets from the Custodial Trust Accounts as provided in this Agreement and the Settlement Agreement; and (iv) to effect all actions and execute all agreements, instruments and other documents necessary to implement this Agreement, including to exercise such other powers as may be vested in or assumed by the Custodial Trust and/or the Custodial Trustee pursuant to this Agreement and any order of the Court or as may be necessary and proper to carry out the provisions of the Plan and the Settlement Agreement. No Person dealing with the Custodial Trust shall be obligated to inquire into the authority of the Custodial Trustee in connection with the protection, conservation or disposition of Custodial Trust Assets. The Custodial Trustee is authorized to execute and deliver all documents on behalf of the Custodial Trust to accomplish the purposes of the Plan, this Agreement, and the Settlement Agreement.

4.4 Other Professionals.

The Custodial Trustee shall have the authority, after approval by the United States and the State, to retain on behalf of the Custodial Trust and pay such third parties as the Custodial Trustee (within the approved budget allowances for such expenses) may deem necessary or appropriate to assist the Custodial Trustee in carrying out its powers and duties under the Plan, this Agreement, and the Settlement Agreement, including, without limitation, (i) counsel to the Custodial Trust and/or Custodial Trustee, (ii) financial advisors, as appropriate, and accounting advisors to perform such reviews and/or audits of the financial books and records of the Custodial Trust as may be appropriate in the Custodial Trustee's reasonable discretion and to prepare and file any tax returns or informational returns for the Custodial Trust or the Custodial Trust Accounts as may be required, and (iii) custodians, security personnel, engineers, surveyors, brokers, contractors, and clerks. The Custodial Trustee may pay all such Persons compensation for services rendered and expenses incurred in accordance with the budgets approved as provided in Section 3.2. Such retained parties shall not be deemed Custodial Trust Parties under this agreement or the Settlement Agreement.

4.5 Limitation of the Custodial Trustee's Authority.

The Custodial Trust and the Custodial Trustee shall not and are not authorized to engage in any trade or business with respect to the Custodial Trust Assets or any proceeds therefrom except as and to the extent the same is deemed in good faith by the Custodial Trustee to be reasonably necessary or proper for the conservation or protection of the Custodial Trust Assets, or the fulfillment of the purposes of the Custodial Trust. The Custodial Trust and the Custodial Trustee shall not take any actions or fail to take any actions that would cause the Custodial Trust to fail to qualify as a qualified settlement fund (for which no grantor trust election has been made) under Section 468B of the Internal Revenue Code and the related Treasury Regulations.

4.6 Compensation of the Custodial Trustee.

The Custodial Trust shall pay its own reasonable and necessary costs and expenses, and shall reimburse the Custodial Trustee for the actual reasonable out-of-pocket fees and expenses

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to the extent incurred by the Custodial Trustee in connection with the Custodial Trustee's duties hereunder, including, without limitation, necessary travel, lodging, office rent (to be paid directly by the Custodial Trust), postage, photocopying, telephone and facsimile charges upon receipt of periodic billings, all in accordance with the approved annual budgets and fee schedules. The Custodial Trustee and employees of the Custodial Trust and the Custodial Trustee who perform services for the Custodial Trust shall be entitled to receive reasonable compensation for services rendered on behalf of the Custodial Trust in accordance with the approved annual budgets and fee schedules.

The Custodial Trust Assets shall be subject to the claims of the Custodial Trustee, and the Custodial Trustee shall be entitled to reimburse itself out of any available cash in the Custodial Trust Administrative Account, and the Custodial Trust shall be obligated to pay, for actual out-of-pocket expenses and for actual hours worked, provided that such costs are within the approved annual budgets.

All compensation and other amounts payable to the Custodial Trustee shall be paid from the Custodial Trust Assets.

4.7 Liability of Custodial Trust Parties.

As provided in Subparagraph 8.b of the Settlement Agreement, in no event shall the Custodial Trust Parties be held liable to any third parties for any liability, action, or inaction of any other party. The liability of the Custodial Trust Parties shall be limited as provided in the Settlement Agreement, and the Custodial Trust Parties shall be indemnified and exculpated as provided in Paragraphs 12 and 13 of the Settlement Agreement. Persons dealing with the Custodial Trust Parties shall look only to the Custodial Trust assets that may be available to them consistent with this Agreement, the Settlement Agreement, and the Plan to satisfy any liability incurred by the Custodial Trust Parties to such person in carrying out the terms of this Agreement, the Settlement Agreement, the Plan, or any order of the Bankruptcy Court, and the Custodial Trust Parties shall have no personal obligations to satisfy any such liability, unless a determination is made by a final order of the Bankruptcy Court finding that the Custodial Trust Parties were negligent or committed fraud or willful misconduct. No Person, including without limitation, holders of claims or other parties in interest, will be allowed to pursue any claim or cause of action against any Custodial Trust Party for any claim against Settlers, for making payments in accordance with the Plan, the Settlement Agreement, this Agreement, or any order of the Court, or for implementing the provisions of the Plan, the Settlement Agreement, this Agreement, or any order of the Court. Nothing in this Agreement or the Settlement Agreement shall preclude the Governments from enforcing the terms of this Agreement or the Settlement Agreement against the Custodial Trust Parties.

4.8 Termination.

The duties, responsibilities and powers of the Custodial Trustee will terminate on the date the Custodial Trust is dissolved under applicable law in accordance with the Plan and the Settlement Agreement, or by an Order of the Court; provided that Sections 2.9 and 4.7 above shall survive such termination, dissolution and entry. The Custodial Trustee may resign by

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giving not less than thirty (30) days prior written notice thereof to the Court, the United States, and the State. The Custodial Trustee may be terminated a) upon completion of the initial five (5) year term or any subsequent specified term; b) as provided in a notice given in accordance with Section 2.9 of this Agreement; c) by order of the Court, upon 60 days' prior written notice, for cause; or d) otherwise as provided in the Settlement Agreement.

4.9 Appointment of Successor Custodial Trustees.

Except for an appointment made under Section 2.9, any successor Custodial Trustee shall be proposed by the joint agreement of the United States and the State and appointed by the Court. Any successor Custodial Trustee designated or appointed hereunder or under Section 2.9 shall execute an instrument accepting such appointment and shall file such acceptance with the Custodial Trust records. Thereupon, such successor Custodial Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts and duties of its predecessor in the Custodial Trust with like effect as if originally named herein; provided, however, that a removed or resigning Custodial Trustee shall, nevertheless, when requested in writing by the successor Custodial Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor Custodial Trustee under the Custodial Trust all the estates, properties, rights, powers, and trusts of such predecessor Custodial Trustee.

4.10 No Bond.

Notwithstanding any state law to the contrary, the Custodial Trustee, including any successor Custodial Trustee, shall be exempt from giving any bond or other security in any jurisdiction.

4.11 No Agency.

The United States, the State, and the Debtors shall not be deemed to be an owner, operator, trustee, partner, agent, shareholder, officer, or director of the Custodial Trust or Custodial Trust Parties, or deemed to be an owner or operator of any of the Montana Sites, on account of this Agreement, the Settlement Agreement, or actions contemplated thereby. Neither the United States nor the State shall be liable for any injury or damages to person or property resulting from acts or omissions of the Custodial Trust Parties in implementing the requirements of this Agreement or the Settlement Agreement. The Custodial Trust Parties shall have no authority to sue the United States or the State with respect to the Montana Sites; provided, however, that the Custodial Trust Parties reserve all rights relating to enforcement of the requirements of this Agreement and the Settlement Agreement.

ARTICLE 5
BENEFICIARIES

5.1 Beneficiaries.

Beneficial interests in the Custodial Trust shall be held by each of the Beneficiaries.

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5.2 Identification of Beneficiaries.

In order to determine the actual names, addresses and authorized representatives of the Beneficiaries, the Custodial Trust and the Custodial Trustee shall be entitled to conclusively rely on the names, address and authorized representatives listed in this Section 5.2 or in any subsequent written notice provided to the Custodial Trustee by an authorized representative of a Beneficiary.

For the State:

For MDEQ:

William B. Kirley
Montana Department of Environmental Quality
1100 N. Last Chance Gulch
P.O. Box 200901
Helena, Montana 59620-0901
bkirley@mt.gov
(406) 841-5017

For MDOJ:

Robert G. Collins
Mary Capdeville
Montana Department of Justice
1301 Lockey Avenue
P.O. Box 201425
Helena, Montana 59620-1425
rcollins@mt.gov; mcapdeville@mt.gov
(406) 444-0205

For the United States:

For USDOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

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For USEPA:

Director, Technical Enforcement Program
Mail code: ENF-RC
US EPA Region 8
1595 Wynkoop Street
Denver, Co 80202-1129

For DOI:

Dana Jacobsen
Department of the Interior
Office of the Solicitor
2850 Youngfield Street
Lakewood, Colorado 80215
(303) 231-5353, Ext. 336
dana.jacobsen@sol.doi.gov

Amy L. Horner
Department of the Interior
Environmental Restoration Branch
Division of Parks and Wildlife
Office of the Solicitor
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MS 3210
Washington, DC 20240
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amy.horner@sol.doi.gov

For the US Forest Service:

Robert Kirkpatrick
Regional Environmental Engineer
Northern Region
USDA Forest Service
Federal Bldg.
P.O. Box 7669
Missoula, MT 59807
(406) 329-3307
Fax (406) 329-3198

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5.3 Non-Beneficiaries.

Upon the Effective Date of this Agreement, the Settlor shall have no interest including, without limitation, any reversionary interest in the Custodial Trust or any Custodial Trust Assets.

5.4 Transfer of Beneficial Interests.

The interests of the Beneficiaries in the Custodial Trust, which are reflected only on the records of the Custodial Trust maintained by the Custodial Trust, are not negotiable and may be transferred only after written notice to the Custodial Trust, by order of the Court or by operation of law. The Custodial Trust shall not be required to record any transfer in favor of any transferee which, in the sole discretion of the Custodial Trust, is or might be construed to be ambiguous or to create uncertainty as to the holder of the interest in the Custodial Trust. Until a transfer is in fact recorded on the books and records maintained by the Custodial Trust for the purpose of identifying Beneficiaries, the Custodial Trust, whether or not in receipt of documents of transfer or other documents relating to the transfer, may nevertheless make distributions and send communications to Beneficiaries, as though it has no notice of any such transfer, and in so doing the Custodial Trust and Custodial Trustee shall be fully protected and incur no liability to any purported transferee or any other Person. Interests in the Custodial Trust may not be transferred to any Settlor, any Debtor, any Reorganized Debtor, AMC, ASARCO USA Incorporated, their successors, their affiliates, any Persons related to any of the preceding (within the meaning of Section 468B(d)(3) of the Internal Revenue Code), or to any Person that is not a "government entity" (within the meaning of Section 468B(g)(2) of the Internal Revenue Code).

ARTICLE 6
REPORTING AND TAXES

6.1 Reports.

As soon as practicable after the end of each calendar quarter beginning with the quarter ended after assets are first received by the Custodial Trust and ending as soon as practicable upon termination of the Custodial Trust, the Custodial Trust shall submit to the Beneficiaries a written report, including: (a) financial statements of the Custodial Trust at the end of such calendar quarter and the receipts and disbursements of the Custodial Trust for such quarter; and (b) a description of any action taken by the Custodial Trust in the performance of its duties which, as determined by counsel, accountants or other professional advisors, materially and adversely affects the Custodial Trust and of which notice has not previously been given to the Beneficiaries. The Custodial Trust shall promptly submit additional reports to the Beneficiaries whenever, as determined by counsel, accountants or other professional advisors, an adverse material event or change occurs which affects either the Custodial Trust or the rights of the Persons receiving distributions (including, without limitation, the Beneficiaries) hereunder. The Custodial Trust shall also provide the reports or information required by Section 3.2 of this Agreement.

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6.2 Other.

The Custodial Trust shall also file (or cause to be filed) any other statements, returns or disclosures relating to the Custodial Trust that are required by any applicable governmental unit.

6.3 Reports in Support of Insurance Claims.

The Custodial Trust shall also file (or cause to be filed) reports and cost analyses in support of claims against insurance carriers at the request of the United States and the State and shall provide the United States and the State a copy of any such reports and cost analyses.

6.4 Taxes.

The Custodial Trustee shall be the "administrator," within the meaning of Treasury Regulations Section 1.468B-2(k)(3), of the Custodial Trust. Subject to definitive guidance from the Internal Revenue Service or a judicial decision to the contrary, the Custodial Trustee shall file tax returns and pay applicable taxes, if any, with respect to the Custodial Trust in a manner consistent with the provisions of Treasury Regulation Section 1.468B-2 and Section 468B(g)(2) of the Internal Revenue Code. Any applicable taxes with respect to the Custodial Trust shall be paid from the Custodial Trust Assets.

ARTICLE 7
MISCELLANEOUS PROVISIONS

7.1 Amendments and Waivers.

Any provision of this Agreement may be amended or waived by mutual consent of the Custodial Trust, the United States, and the State; provided, however, that no change shall be made to this Agreement that would alter the provisions of Section 7.2 hereof or adversely affect the federal income tax status of the Custodial Trust as a "qualified settlement fund" for which no grantor trust election has been made (in accordance with Section 2.1.4 hereof), or, unless agreed to in writing by the affected Custodial Trustee, the rights of the Custodial Trustee. Technical amendments to this Agreement may be made as necessary, to clarify this Agreement or enable the Custodial Trustee to effectuate the terms of this Agreement, in a manner consistent with the Settlement Agreement and the Plan with the mutual consent of the Custodial Trust, the United States, and the State.

7.2 Tax Treatment.

The Custodial Trust created by this Agreement is intended to be treated as a qualified settlement fund (for which no grantor trust election has been made) pursuant to Section 468B of the Internal Revenue Code and related Treasury Regulations and, as a tax-exempt settlement fund (to the extent that the beneficial interests in the Custodial Trust are owned by "government entities," within the meaning of Section 468(g)(2) of the Internal Revenue Code) pursuant to Section 468B(g)(2) of the Internal Revenue Code for income tax purposes, and to the extent provided by law, this Agreement shall be governed and construed in all respects consistent with

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such intent. In no event shall the Settlers or the Custodial Trustee take the position that any portion of the Custodial Trust or any portion of a Custodial Trust Account is a grantor trust owned by any or all of the Settlers.

7.3 Cooperation.

Within 30 days after the Effective Date, the Settlers shall provide the Custodial Trustee with copies of their books and records relating to the Designated Properties for the purpose of performing its duties and exercising its powers hereunder, including all environmental information and/or data, in the state and condition in which such records are found, regarding the Designated Properties in possession of Debtors or their contractors. The Custodial Trust and Custodial Trustee shall take such actions and execute such documents as are reasonably requested by Debtors with respect to effectuating the Plan and the transactions contemplated thereby, provided that such actions are not inconsistent with this Agreement or the Settlement Agreement. To the extent that Debtors request the Custodial Trust and/or the Custodial Trustee to take such an action, the Custodial Trust and Custodial Trustee shall do so at the sole expense of the Debtors. The Custodial Trust, Debtors, and the Lead Agency for each of the Designated Properties will exchange information and reasonably cooperate to determine the appropriate disposition of any executory contracts or unexpired leases that relate to the relevant site.

7.4 Situs of the Custodial Trust.

The situs of the Custodial Trust herein established is Montana, and the laws of Montana shall control with respect to the construction, administration, and validity of the Custodial Trust and to the construction and interpretation of this Agreement, without giving effect to rules governing the conflict of law.

7.5 Severability.

If any provision of this Agreement or application thereof to any Person or circumstance shall be finally determined by the Court to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

7.6 Sufficient Notice.

Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if deposited, postage prepaid, in a post office or letter box addressed to the Person for whom such notice is intended, to the name and address set forth in the case of a Beneficiary in Section 5.2 of this Agreement or such other address provided in writing to the Custodial Trust by an authorized representative of the respective Beneficiary.

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7.7 Headings.

The section headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or any term or provision hereof.

7.8 Actions Taken on Other Than Business Day.

If any payment or act under the Settlement Agreement is required to be made or performed on a date that is not a business day, then the making of such payment or the performance of such act may be completed on the next succeeding business day, but shall be deemed to have been completed as of the required date. For the purposes of this Agreement, a business day shall be any of the days Monday through Friday excluding national holidays.

7.9 Consistency of Agreements and Construction.

To the extent reasonably possible, the provisions of this Agreement shall be interpreted in a manner consistent with the Settlement Agreement. Where the provisions of this Agreement are irreconcilable with the provisions of the Settlement Agreement, the provisions of the Settlement Agreement shall control.

7.10 Enforcement Authorities of the United States and the State.

Nothing in this Agreement shall be deemed to limit the authority of the United States or the State to take response action under Section 104 of CERCLA, 42 U.S.C. § 9604, similar provisions of State law, including Mont. Code Ann. §§ 75-10-711 and 75-10-712, or any other applicable federal or State law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States or the State pursuant to that authority.

7.11 Compliance with Laws.

Any and all distributions of Custodial Trust Assets shall be in compliance with applicable laws, including, but not limited to, applicable federal and state securities laws.

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IN WITNESS WHEREOF, THE UNDERSIGNED PARTIES ENTER INTO THIS ENVIRONMENTAL CUSTODIAL TRUST AGREEMENT.

ASARCO LLC

By: _____

Name: _____

By: _____

Name: _____

ASARCO MASTER INC.

By: _____

Name: _____

By: _____

Name: _____

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FOR THE CUSTODIAL TRUSTEE:

_____ not individually, in but **[its/his]** fiduciary capacity as Custodial Trustee of the Custodial Trust

By: _____
_____, not individually, but solely as _____
of _____, not individually, but **[its/his]** fiduciary
capacity as Custodial Trustee of the Custodial Trust

Date: _____

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FOR THE UNITED STATES

Date: _____

Ronald J. Tenpas
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: _____

Alan S. Tenenbaum
David L. Dain
Eric D. Albert
Environment and Natural Resources Division
Environmental Enforcement Section
U.S. Department of Justice

Date: _____

Catherine R. McCabe
Environmental Protection Agency
Principal Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance

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FOR THE STATE OF MONTANA

Montana Department of Environmental Quality

Date: _____

Richard H. Opper
Director
Montana Department of Environmental Quality

Date: _____

William B. Kirley
Chief Remediation Counsel
Montana Department of Environmental Quality
1100 N. Last Chance Gulch
P.O. Box 200901
Helena, Montana 59620-0901

Montana Department of Justice Natural Resource Damage Program

Date: _____

Mike McGrath
Attorney General

Date: _____

Robert G. Collins
Supervising Assistant Attorney General
Mary Capdeville
Assistant Attorney General
Montana Department of Justice
1301 Lockey Avenue
P.O. Box 201425
Helena, Montana 59620-1425